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FEDERAL REGISTER

Vol. 81 Wednesday,
No. 139 July 20, 2016

Pages 47001–47284

OFFICE OF THE FEDERAL REGISTER

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

[Docket No. DHS–2016–0039]

Chemical Facility Anti-Terrorism Standards

AGENCY: Department of Homeland Security.

ACTION: Suspension and modification of certain submission requirements for chemical facilities of interest and covered chemical facilities under agency regulations.

SUMMARY: The U.S. Department of Homeland Security (DHS or Department) is publishing this document to inform the public of the Department's actions to implement an improved tiering methodology for the Chemical Facility Anti-Terrorism Standards (CFATS) program that incorporates the relevant elements of risk mandated by section 2102(e)(2) of title XXI of the Homeland Security Act of 2002 (as amended). Implementation of the improved tiering methodology required changes to an Information Collection Request (ICR), which has recently been approved by the Office of Management and Budget (OMB).

DATES: This document goes into effect July 20, 2016, or as otherwise specified in this document.

FOR FURTHER INFORMATION CONTACT: Jessica Falcon, Chief, Compliance Branch, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0610, Arlington, VA 20598–0610; Phone: 703–235–5263, Fax: 866–731–2728.

SUPPLEMENTARY INFORMATION:

I. Background & History

In December 2014, the President signed into law the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014[1] or "CFATS Act of 2014" (Pub. L. 113–254, 6 U.S.C. 621, *et seq.*). The CFATS Act of 2014 amended the Homeland Security Act of 2002[2] (6 U.S.C. 101 *et seq.*) with the addition of Title XXI—Chemical Facility Anti-Terrorism Standards—authorizing the Department to regulate chemical facilities of interest.[3]

Section 2102(e)(2) of Title XXI of the Homeland Security Act of 2002 (as amended) requires that the Department incorporate the relevant elements of risk in determining the risk of terrorism associated with a covered chemical facility.[4] The improved tiering methodology will require the submission by facilities of information that differs in some respects from the information that has previously been collected. Accordingly, the Department published two notices, one in November 2015 and one in April of 2016, that requested comments about the recently approved ICR for the Chemical Security Assessment Tool (CSAT).[5] Among the approved revisions, the ICR describes a revised Top-Screen that will enable the Department to comply with Section 2102(e)(2) of Title XXI of the Homeland Security Act of 2002 (as amended).[6]

II. Department's Transition to a Revised Top-Screen, Security Vulnerability Assessment, and Site Security Plan Applications

The Department will transition to the revised CSAT Top-Screen application, a revised CSAT Security Vulnerability Assessment (SVA) application, and a revised CSAT Site Security Plan (SSP) application, hereafter described as "CSAT 2.0". The Department expects to begin collecting information using CSAT 2.0 from chemical facilities of interest in the near future using a phased approach.

The Department considered several alternatives for transitioning from the existing CSAT applications to CSAT 2.0 to minimize undue effort and unnecessary complexity that could inadvertently cause confusion. The Department believes that the actions taken in this document represent a reasonable transition process.

The transition from the existing CSAT applications to CSAT 2.0 will be a three-step process. The first step is to temporarily suspend, effective July 20, 2016, the requirement for CFATS chemical facilities of interest to submit a Top-Screen and SVA. This suspension is designed to help chemical facilities of interest avoid expending time and resources on Top-Screen and SVA submissions during the transition to CSAT 2.0. The Department will continue to allow covered chemical facilities to submit new or revised SSPs and Alternative Security Programs (ASPs) in lieu of an SSP using the current CSAT SSP application up until the date of transition to CSAT 2.0.

The second step will be to replace the current CSAT Top-Screen, SVA, and SSP applications with CSAT 2.0 (*i.e.*, the revised CSAT Top-Screen, SVA, and SSP applications). The Department currently plans to take this step in September 2016. Soon after transitioning to CSAT 2.0, the Department will, in a phased approach, begin individually notifying chemical facilities of interest to submit a Top-Screen using the revised CSAT Top-Screen application. Notification will be sent to facilities that either (a) have previously submitted a Top-Screen with COI above the STQ, or (b) the Department has reason to believe have COI at or above the STQ. Section III and IV of this document describe which chemical facilities of interest will and will not be required to submit a Top-Screen.

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[1] Public Law 113–254, 128 Stat. 2898, Dec. 18, 2014, is available at: *https://www.congress.gov/bill/113th-congress/house-bill/4007?q=%7B%22search%22%3A%5B%22HR+4007%22%5D%7D* (CFATS Act of 2014).

[2] Public Law 107–296 Stat. 2135, Nov. 25, 2002 is available at: *https://www.gpo.gov/fdsys/pkg/PLAW-107publ296/pdf/PLAW-107publ296.pdf.* (Homeland Security Act of 2002)

[3] Section 2101(2) of the Homeland Security Act of 2002, as enacted on December 18, 2014, defined chemical facility of interest as a facility that holds, or that the Secretary has a reasonable basis to believe holds, a chemical of interest at a set threshold quantity pursuant to relevant risk related security principles and is not an excluded facility.

[4] Section 2101(3) of the Homeland Security Act of 2002 as enacted on December 18, 2014 defined covered chemical facility as a chemical facility of interest that based upon a review of the facility's top screen meets the risk criteria developed under section 2102(e)(2)(B) of the Homeland Security Act of 2002 and is not an excluded facility.

[5] See *https://www.federalregister.gov/articles/2015/11/18/2015-29457/chemical-security-assessment-tool-csat#p-25.*

[6] The Chemical Security Assessment Tool (CSAT) OMB Information Collection Request for 1670–0007 may be viewed at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-1670-001.*

The third step will be to reinstate the Top-Screen and SVA submission requirements in 6 CFR 27.210(a) on October 1, 2016.

III. Facilities That Will Be Required To Submit a Top-Screen

After the transition to CSAT 2.0, the Department will begin individually notifying chemical facilities of interest (to include facilities previously determined not to be high-risk), unless otherwise described in Section IV of this document, to submit a Top-Screen using the revised CSAT Top-Screen application. The Department will send a specific written notification in this regard, pursuant to its authority under 6 CFR 27.210(a)(1)(ii). These letters will be issued in a phased manner over the course of several months.

A facility that does not possess any chemical of interest (COI) at or above the Screening Threshold Quantity (STQ) and as applicable, at or above the minimum concentration specified in Appendix A will not need to submit a Top-Screen. However, any such facility, if provided with written notice to submit a Top-Screen, must notify the Department why it is not submitting a Top-Screen. Notification may be done either by (a) accessing CSAT and submitting a Top-Screen with no COI selected[7] or (b) by sending a letter or fax to the contact listed in the contact section of this document.

A covered chemical facility does not have to wait for written notification from the Department to submit a Top-Screen after the Department transitions to CSAT 2.0. A covered chemical facility may find it advantageous to submit a Top-Screen prior to receiving specific notification from the Department if it believes its tier might be lowered under the improved tiering methodology.

Chemical facilities of interest that come into reportable amounts of COI listed on Appendix A during the temporary suspension must submit a Top-Screen within 60 days of reinstatement. The reinstatement of the submission requirements also means that chemical facilities of interest that either: (a) Come into possession of reportable amounts of COI listed on Appendix A after the reinstatement of submission, or (b) have not complied with the existing reporting requirement since November 20, 2007 have an obligation to submit a Top-Screen within 60 days of reinstatement.

IV. Facilities That Will Not Be Required To Submit a Top-Screen

If a facility described below receives a notification letter directing it to submit a Top-Screen, it should contact the Department for further guidance—using either the contact information contained in the contact section of this document or by contacting the CFATS Helpdesk.[8]

A. Agricultural Production Facilities and Miscellaneous Extensions

This document does not modify the existing Top-Screen submission extension applicable to Agricultural Production Facilities that use COI in preparation for the treatment of crops, feed, land, livestock (including poultry), or other areas of an Agricultural Production Facility or during application to or treatment of crops, feed, land, livestock (including poultry), or other areas of the facility.[9] Similarly, this document does not modify any other extension issued by the Department for submitting a Top-Screen.

B. Chemical Facilities of Interest With Reportable COI That Is Present in a Gasoline Mixture

The Department's practice has been to indefinitely extend the due dates for submission of Top-Screens, and as applicable SVAs and SSPs, for chemical facilities of interest whose only reportable COI is present in a gasoline mixture. Nothing in this document is intended to alter that practice; however, chemical facilities of interest that reported or have come into possession of one or more COI above the STQ in addition to the COI present in gasoline will be required to submit a Top-Screen in the revised CSAT Top-Screen application for that COI. The Department does not intend to send written notifications requesting revised Top-Screens from facilities that have previously submitted a Top-Screen with only COI present in gasoline.

C. Statutorily Excluded Facilities

Facilities that are statutorily excluded from CFATS are not required to submit a Top-Screen, and the Department does not intend to send written notifications requesting statutorily-excluded facilities to submit a Top-Screen.[10]

D. Untiered Facilities That Previously Notified the Department They Had No Reportable COI

The Department does not intend to require untiered facilities that previously submitted a Top-Screen with no COI selected to submit another Top-Screen; however, the Department does expect such facilities to submit a Top-Screen if they have come into possession of a reportable amount of COI since submitting their previous Top-Screen.

V. Unsubmitted SVAs and SSPs in the Current CSAT SVA and SSP Applications

The Department notes that (a) some SVAs that have been initiated in the current CSAT SVA application have not yet been submitted, and similarly that (b) some SSPs that have been initiated in the current CSAT SSP application have not yet been submitted. Only complete and submitted SVAs and complete and submitted SSPs will be retained in CSAT 2.0.[11]

Upon transitioning to CSAT 2.0, the Department will delete any partially completed SVA (*i.e.*, unsubmitted SVA) found in the current CSAT SVA application. Any covered chemical facility that has either (a) an unsubmitted SVA within the current CSAT SVA application or (b) has submitted an SVA but not received a final tier determination based on its most recent SVA submission, will receive written notification from the Department to submit a Top-Screen using the revised CSAT Top-Screen application.

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[7] It is common practice for a covered chemical facility that no longer possesses COI at or above the (STQ) and at or above the minimum concentration specified in Appendix A to submit a revised Top-Screen with no COI selected. Upon receiving the revised Top-Screen and confirming the information, the Department determines the facility no longer is a high risk chemical facility.

[8] The CFATS Helpdesk may be contacted at 866–323–2957 Monday through Friday from 8:30 a.m. to 5:00 p.m. (EST). The CFATS Helpdesk is closed on Federal Holidays.

[9] The Department of Homeland Security published a letter that it issued on December 21, 2007. Through this letter, the Department granted a time extension for farmers and other agricultural end-users who would otherwise have been required to submit a Top-Screen consequence assessment through the secure online CSAT Top-Screen. See 73 FR 1640, Jan. 9, 2008 is available at *https://federalregister.gov/a/E8-199.*

[10] Section 2101(4) of the Homeland Security Act of 2002, as enacted on December 18, 2014 defined excluded facility as: (A) A facility regulated under the Maritime Transportation Security Act of 2002 (Pub. L. 107–295; 116 Stat. 2064); (B) a public water system, as that term is defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f); (C) a Treatment Works, as that term is defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292); (D) a facility owned or operated by the Department of Defense or the Department of Energy; or (E) a facility subject to regulation by the Nuclear Regulatory Commission, or by a State that has entered into an agreement with the Nuclear Regulatory Commission under section 274 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)) to protect against unauthorized access of any material, activity, or structure licensed by the Nuclear Regulatory Commission.

[11] A covered chemical facility that would like to preserve information within the current CSAT SSP application prior to the transition to CSAT 2.0 may consider generating a PDF of the partially SSP.

Upon transitioning to CSAT 2.0, the Department will delete any partially completed SSP (*i.e.,* unsubmitted SSPs) in the current CSAT SSP application. This means that if a covered chemical facility has not submitted its SSP prior to the transition to CSAT 2.0, any data in its partially completed SSP *(i.e.,* unsubmitted SSP) within the current CSAT SSP application will be deleted and will no longer be retrievable. Any data from a SSP previously submitted through the current CSAT SSP application will be available and pre-populated in CSAT 2.0.

VI. Changes to Submission Schedule for SVAs and SSPs

A. Impacts to "Initial Submission" Schedule at 6 CFR 27.210(a)

As described in the November 2015 CSAT ICR Notice, the Department expects that because of the revisions in CSAT 2.0:

- Chemical facilities will spend 90 percent less time logged into the SVA application, and
- Chemical facilities will spend 70 percent less time logged into the SSP application.

Furthermore, as mentioned in the November 2015 CSAT ICR Notice one of the expected outcomes of the revisions is a greater confidence in the tiering results conducted after the Top-Screen. Hence, while the Department reserves the right to modify a facility's tier following review of the facility's SVA, generally speaking, the Department will rely on the information submitted in a facility's Top-Screen to make a single tiering determination for the facility, as described in 6 CFR 27.220(a). The Department will indicate confirmation of or, in extremely rare cases, alteration of, the facility's tier in a Letter of Authorization (or, in the case of a facility electing to submit an SSP under the Expedited Approval Program, a Letter of Acceptance).

In large part due to (a) the Department's reliance on a single tiering determination based on a facility's Top-Screen, and (b) an improved integration between the CSAT SVA application and the CSAT SSP application, the revised CSAT SVA application and revised CSAT SSP application have been designed to be completed and submitted together. The Department also believes that the revised CSAT SVA application aligns substantially better with 6 CFR 27.215 (the requirements of an SVA) compared to the current CSAT SVA application. Therefore, the Department, in this document, is streamlining the submission requirements to align with the revised CSAT SVA application and revised CSAT SSP application efficiencies described in the CSAT ICR by aligning the submission requirements and having them run in parallel. Based on these changes, the SVA start date and due date will be the same as the SSP start date and due date, respectively. Specifically, in this document, the Department is using its authorities:

- Under 6 CFR 27.210(a)(2), when the Department transitions to CSAT 2.0, to require covered chemical facilities to submit their initial SVA within 120 days of written notification of the Department's determination under 6 CFR 27.205(a) that they are high-risk.
- under 6 CFR 27.210(a)(3), when the Department transitions to CSAT 2.0, to require covered chemical facilities to submit their initial SSP within 120 days of written notification of the Department's determination under 6 CFR 27.205(a) that they are high-risk.

Therefore, the deadline for a covered chemical facility to submit an initial SVA and an initial SSP will be 120 days after the Department's tiering determination described in 6 CFR 27.205(a). Facilities may request extensions to the due dates for the SVA and SSP. All requests will be considered by the Department on a case by case basis.

B. Impacts to "Resubmission Schedule for Covered Facilities" at 6 CFR 27.210(b)

As previously explained, the Department expects to maintain the ability to have data from the most recently submitted CSAT SSP pre-populate into an SSP that will be available in the CSAT 2.0 SSP application. As a result, after the transition to CSAT 2.0, covered chemical facilities that need to revise their SSPs will need to (a) review a pre-populated SSP for completeness and accuracy; and (b) make any necessary updates or corrections to their SSP before submission using the revised CSAT SSP application. Because the new CSAT 2.0 design contemplates the submission of the SVA and SSP together, covered chemical facilities will also be required to revise their SVAs if/when they revise their SSPs. Furthermore, the start date and due date for a revised SVA will be the same as the start date and due date, respectively, for the covered chemical facility's revised SSP. Covered chemical facilities will be required to submit revised SVAs and revised SSP within 30 days of written notification from the Department. The Department selected the 30 day deadline because it has been allowing covered chemical facilities 30 days to complete revisions to their SVAs and SSPs for the past several years and found that it is a sufficient amount of time for most facilities. The Department will consider requests for extensions to the due dates for revised SVAs and SSPs.

VII. Additional Considerations for Chemical Facilities of Interest

A. Inactive CSAT User Accounts

Many chemical facilities of interest previously determined not to be high risk will need to reactivate the CSAT account(s) of their designated representative(s) or register a new representative. All chemical facilities of interest affected by this document, in particular chemical facilities of interest previously determined not to be high risk, should verify what, if any, steps they need to take in order to ensure that an appropriate representative has an active CSAT account. For assistance on how to reactivate a CSAT account please contact the CFATS Help Desk. Information about how to register for a new CSAT account can be found on the CFATS Knowledge Center at *www.dhs.gov/chemicalsecurity.*

B. Need for Chemical-Terrorism Vulnerability Information (CVI) Certification

To access CSAT, a CSAT User must be a Chemical-terrorism Vulnerability Information (CVI) authorized user. CSAT Users, in particular CSAT users affiliated with chemical facilities of interest previously determined not to be high risk, may need to complete CVI training and apply to be a CVI Authorized User prior to their ability to access CSAT. To verify your status as a CVI Authorized User you may contact the CFATS Helpdesk.

VIII. Regulatory Actions This Document Exercises Under Part 27 of Title 6, Code of Federal Regulations

This document exercises the following regulatory actions:

- Temporarily suspends the requirement to submit a Top-Screen and SVA on July 20, 2016. The Department is authorized to take this action under § 27.210(a)(1)(ii) and (a)(2) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public that when the Department transitions to CSAT 2.0, a covered chemical facility will be required to submit its initial SVA within 120 days of notification of the Department's determination under 6 CFR 27.205(a) that they are high-risk.

The Department is authorized to take this action under § 27.210(a)(2) of part 27 of title 6, Code of Federal Regulations.

- Notifies the public that when the Department transitions to CSAT 2.0, a covered chemical facility will be required to submit its initial SSP within 120 days of notification of the Department's determination under 6 CFR 27.205(a) that they are high-risk. The Department is authorized to take this action under § 27.210(a)(3) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public that when the Department transitions to CSAT 2.0, covered chemical facilities seeking to revise an SSP will also be required to revise their SVA. The Department is authorized to take this action under § 27.210(b)(2) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public that when the Department transitions to CSAT 2.0, a covered chemical facility submitting a revised SVA will have 30 days to submit its revised SVA. The Department is authorized to take this action under § 27.210(a)(2) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public that when the Department transitions to CSAT 2.0, a covered chemical facility submitting a revised SSP will have 30 days to submit its revised SSP. The Department is authorized to take this action under § 27.210(a)(3) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public of the reinstatement of the Top-Screen and SVA submission requirements on October 1, 2016. This means that chemical facilities of interest that acquire reportable amounts of COI listed on Appendix A after the reinstatement of the requirement to submit a Top-Screen and SVA must submit a Top-Screen within 60 days. The reinstatement of the submission requirements also means that chemical facilities of interest that have not complied with the existing reporting requirement since November 20, 2007 must also submit a Top-Screen with 60 days. The Department is authorized to take this action under § 27.210(a)(1)(ii) and (a)(2) of part 27 of title 6, Code of Federal Regulations.
- Notifies the public that a chemical facility of interest will have 60 days following the reinstatement of the submission requirements under 6 CFR 27.210(a) to submit a Top-Screen if the chemical of facility of interest have come into possession of a reportable amount of COI after July 20, 2016 but before reinstatement of the submission requirements. The Department is authorized to take this action under § 27.210(a)(1)(ii) of part 27 of title 6, Code of Federal Regulations.

This document does not require chemical facilities to immediately submit a Top-Screen after the transition to the revised CSAT Top-Screen application. Rather, this document publicizes the Department's intent to begin individually notifying chemical facilities of interest. After the transition to CSAT 2.0, the Department will begin sending written notification to chemical facilities of interest requiring them to submit a Top-Screen using the revised CSAT Top-Screen application. Finally, the Department (1) reemphasizes that once the Department transitions to CSAT 2.0, any chemical facility of interest can submit a Top-Screen using the revised CSAT Top-Screen application, regardless of whether it has received written notification from the Department, and (2) continues to be available for consultation to any chemical facility of interest before, during, or after the transition to CSAT 2.0. In particular the Department is available for consultation to any chemical facilities of interest that acquire COI for the first time. Requests for consultation can be made through the CFATS Helpdesk.

Taken together the process and steps outlined in this document will enable the Department to collect the necessary information to implement the improved tiering methodology required in Section 2102(e)(2) of the Homeland Security Act of 2002.

Dated: July 11, 2016.

David M. Wulf,

Director, Infrastructure Security Compliance Division, Office of Infrastructure Protection, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2016–16776 Filed 7–19–16; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document No. AMS–SC–15–0079]

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Withdrawal for a Continuance Referendum

AGENCY: Agricultural Marketing Service, Department of Agriculture.

ACTION: Withdrawal of referendum order.

SUMMARY: On February 23, 2016, a document directing that a referendum be conducted in August 2016 among eligible domestic manufacturers and importers of softwood lumber to determine whether they favor continuance of the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) was published in the **Federal Register** (81 FR 8822). The document is hereby withdrawn. The referendum has been postponed until a future date to be determined by the Secretary.

DATES: The document published February 23, 2016 (81 FR 8822) is withdrawn as of July 20, 2016.

FOR FURTHER INFORMATION CONTACT: Maureen Pello, Marketing Specialist, PED, SC, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915, (503) 632–8848 (direct line); facsimile: (202) 205–2800; or electronic mail: *Maureen.Pello@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This document is issued under the Order (7 CFR part 1217). The Order is authorized under the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411–7425).

This document withdrawals a referendum order that was published in the **Federal Register** on February 23, 2016, directing that a referendum be conducted in August 2016 among eligible softwood lumber domestic manufacturers and importers to determine whether they favor continuance of the Order. The referendum has been postponed until a future date to be determined by the Secretary.

Dated: July 14, 2016.

Elanor Starmer,

Administrator.

[FR Doc. 2016–17038 Filed 7–19–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 112

[Docket No. APHIS–2011–0049]

RIN 0579–AD64

Viruses, Serums, Toxins, and Analogous Products; Single Label Claim for Veterinary Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on July 10, 2015, and effective on September 8, 2015, we amended the Virus-Serum-Toxin Act regulations to provide for the use of a simpler labeling format that would better communicate product performance to the user. Among other things, we provided the address of a Web site for accessing transmittal forms to be used with each submission of sketches and labels. However, the Web site address provided is incorrect. Therefore, we are amending the regulations to provide the correct address.

DATES: Effective July 20, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737; (301) 851–2352.

SUPPLEMENTARY INFORMATION: In a final rule[1] that was published in the **Federal Register** on July 10, 2015 (80 FR 39669–39675, Docket No. APHIS–2011–0049), and effective on September 8, 2015, we amended the Virus-Serum-Toxin Act regulations to provide for the use of a simpler labeling format that would better communicate product performance to the user. Among other things, we provided the address of a Web site in § 112.5(a) for accessing transmittal forms to be used with each submission of sketches (including proofs) and labels. However, the Web site address provided is for accessing product licensing data and not transmittal forms. Therefore, we are amending § 112.5(a) to correct the address.

Lists of Subjects in 9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, packaging and containers, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 112 as follows:

PART 112—PACKAGING AND LABELING

■ 1. The authority citation for part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

§ 112.5 [Amended]

■ 2. In § 112.5, paragraph (a) is amended by removing the words "(*productdata.aphis.usda.gov*)" and adding the words "(*http://www.aphis.usda.gov/animalhealth/cvb/forms*)" in their place.

Done in Washington, DC, this 14th day of July 2016.

Jere L. Dick,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–17073 Filed 7–19–16; 8:45 am]

BILLING CODE 3410–34–P

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[1] To view the final rule and supporting documents, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0049*.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC–2016–0117]

RIN 3150–AJ76

Update to Transcript Correction Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulation that governs the correction of official transcripts for agency adjudicatory proceedings. The current regulation has not been substantively updated since it was adopted in 1962 and the NRC's internal procedures have evolved since that time to incorporate technological development. The NRC is not soliciting public comment on this change because the change is limited to an agency rule of procedure and practice that does not affect the rights and responsibilities of outside parties.

DATES: This final rule is effective on July 20, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0117 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0117. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For other questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Public Document Room (PDR): You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Tison Campbell, Office of the General Counsel, telephone: 301–287–9290, email: *Tison.Campbell@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Summary of Changes

In 1962, the Atomic Energy Commission (the NRC's predecessor agency) adopted revised rules of practice and procedure to govern the conduct of adjudicatory proceedings before the agency (27 FR 377; January 13, 1962). As part of those regulations, the Commission adopted a paragraph governing the correction of hearing transcripts. That provision, originally at § 2.750(b) of title 10 of the *Code of Federal Regulations* (10 CFR), provided specific, prescriptive direction to the Commission's staff regarding the method for recording and showing corrections to transcripts. For example, the Secretary was directed to make any physical corrections to the official transcript, not by replacing pages, but by drawing a line through the text to be changed in the original transcript and writing the correct text immediately above.

The current agency practice varies. In Commission proceedings, an appendix listing the transcript corrections and a clean version of the transcript are attached to the order adopting the parties' proposed transcript corrections. In Atomic Safety and Licensing Board Panel proceedings, the boards generally issue an order adopting the parties' joint proposed transcript corrections, with or without an appendix listing the corrections. The Secretary does not prepare transcripts of board proceedings.

The NRC is, therefore, updating the regulation that governs the correction of official transcripts for agency adjudicatory proceedings, currently at

§ 2.327(d), to reflect advancements in technology and to bring its regulations in line with current agency practice. The revision to § 2.327(d) removes prescriptive requirements from the regulation and allows presiding officers flexibility in determining the method to prepare corrected transcripts. This change allows the presiding officer to list transcript changes in a table included in or appended to an order; issue a marked-up version of the transcript; issue a clean, revised version of the transcript; or select another method that ensures a clear and concise description of transcript changes.

II. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)(A)), notice and comment requirements do not apply "to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice." Because this revision affects the NRC's rules of agency procedure and practice, the notice and comment provisions of the Administrative Procedure Act do not apply. Moreover, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC.

The amendments are effective upon publication in the **Federal Register**. Good cause exists under 5 U.S.C. 553(d) to dispense with the usual 30-day delay in the effective date of the final rule because the amendments are of a minor and administrative nature dealing with changes to certain sections that do not require action by any person or entity regulated by the NRC.

III. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

IV. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

V. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

VI. Congressional Review Act

This final rule is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

VII. Availability of Guidance

The NRC will not be issuing guidance for this rulemaking because the revised rule applies to the NRC only and does not affect the rights and responsibilities of outside parties.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note. Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

■ 2. In § 2.327, revise paragraph (d) to read as follows:

§ 2.327 Official recording; transcript.

* * * * *

(d) *Transcript corrections.* Corrections ordered or approved by the presiding officer must be included in the record through the issuance of an order by the presiding officer or the Secretary, as appropriate under the regulations in this part. The order shall reflect the corrections to the transcript through the use of a table, the issuance of a corrected or new transcript, or some other method selected by the presiding officer that will ensure a clear and concise description of the corrections.

Dated at Rockville, Maryland, this 14th day of July, 2016.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch. Office of Administration.

[FR Doc. 2016–17072 Filed 7–19–16; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–1543]

RIN 7100 AE–55

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the "Board") is issuing an interim final rule amending its rules of practice and procedure to adjust the amount of each civil monetary penalty ("CMP") provided by law within its jurisdiction to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This interim final rule is effective on August 1, 2016. Comments on the interim final rule must be received on or before August 30, 2016.

ADDRESSES: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1543 and RIN 7100 AE 55, by any of the following methods:

- *Agency Web site: www.federalreserve.gov.* Follow the instructions for submitting comments at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Streets), Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Katherine H. Wheatley, Associate General Counsel (202/452–3779), or Mehrnoush Bigloo, Senior Attorney (202/475–6361), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW., Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Federal Civil Penalties Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note ("FCPIA Act"), requires Federal agencies to adjust, by regulation, the CMPs within their jurisdiction to account for inflation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the "2015 Act" or the "Act")[1] amended the FCPIA to require the adjustment to be made annually rather than every four years, and to direct federal agencies to make the "catch-up" adjustment—the first inflation adjustment after the date of enactment of the 2015 Act—through an interim final rulemaking, to take effect no later than August 1, 2016.[2] The Board is issuing this interim final rule to set the new civil monetary penalty levels pursuant to the required catch-up adjustment. The Board will apply these adjusted maximum penalty levels to any penalties assessed on or after August 1, 2016. Penalties assessed prior to August 1, 2016, will be subject to the amounts set in the Board's last adjustment pursuant to the FCPIA.[3]

Under the 2015 Act, the initial catch-up adjustment is the percentage for each civil monetary penalty by which the Consumer Price Index for the month of October 2015 exceeds the Consumer Price Index for the month of October of the calendar year during which the amount of the penalty was established or adjusted other than pursuant to the FCPIA. On February 24, 2016, as directed by the 2015 Act, the Office of Management and Budget (OMB) issued guidance to agencies on implementing the required catch-up adjustment which included the relevant inflation multipliers per calendar year.[4] Using OMB's multipliers, the Board calculated the adjusted penalties for its civil monetary penalties, rounding the penalties to the nearest dollar. Under the 2015 Act, the amount of any increase may not exceed 150 percent of the amount of the penalty on the date of the enactment of the 2015 Act, which is November 2, 2015.[5] Accordingly, in a few cases where the calculated penalties exceeded the statutory maximum, the Board adjusted the respective penalty amount to 250 percent of the prior penalty. The Board also determined that none of the increases resulting from application of the 2015 Act's formula would have a negative economic impact and that any social costs of increasing those penalty limits would not outweigh the benefits of the increase. For this reason, the Board did not seek an exception from the application of the formula as permitted by section 4(c) of the 2015 Act.

Administrative Procedure Act

Pursuant to the Administrative Procedure Act (the "APA"), notice of proposed rulemaking and opportunity for public comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[6] As discussed above, the Board calculated the initial catch-up adjustment strictly in accordance with the requirements of the 2015 Act and OMB's implementing guidance. Moreover, the 2015 Act expressly requires the Board to publish the new catch-up penalty levels through an interim final rule, meaning that the rule can become effective prior to the receipt of public comments.[7] For these reasons, the Board finds good cause to determine that publishing a notice of proposed rulemaking and providing opportunity for public comment prior to adopting a final rule are unnecessary.[8] Nevertheless, because the Board is required to publish the catch-up penalty levels through an interim final rulemaking, the Board is inviting comments on this interim final rule. In view of the fact that the Board has calculated the catch-up adjustments strictly in accordance with OMB's implementing guidance, the Board specifically encourages comments identifying any issues with the Board's calculations under that guidance. The Board also invites comments regarding its determination that the bases for an exception under section 4(c) of the 2015 Act were not met.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires a regulatory flexibility analysis only for rules for which an agency is required to publish a general notice of proposed rulemaking. Because the 2015 Act requires agencies' catch-up adjustments to be made through an interim final rule, the Board is not publishing a notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act

There is no collection of information required by this interim final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Lawyers, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors amends 12 CFR part 263 as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 334, 347a, 504, 505, 1464, 1467, 1467a, 1817(j), 1818, 1820(k), 1829, 1831o, 1831p–1, 1832(c), 1847(b), 1847(d), 1884, 1972(2)(F), 3105, 3108, 3110, 3349, 3907, 3909(d), 4717; 15 U.S.C. 21, 78l(i), 78o–4, 78o–5, 78u–2; 1639e(k); 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

■ 2. Section 263.65 is revised to read as follows:

§ 263.65 Civil monetary penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, the Board has set forth in paragraph (b) of this section the adjusted maximum amounts for each civil monetary penalty provided by law within the Board's jurisdiction. The authorizing statutes contain the complete provisions under which the Board may seek a civil monetary penalty. The adjusted civil monetary penalties apply only to penalties assessed on or after August 1, 2016.

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[1] Pub. L. 114–74, 129 Stat. 599 (2015) (codified at 28 U.S.C. 2461 note).

[2] 28 U.S.C. 2461 note, section 4(b)(1).

[3] 77 FR 68,680 (Nov. 16, 2012).

[4] OMB Memorandum M–16–06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Feb. 24, 2016).

[5] 28 U.S.C. 2461 note, section 4(b)(2)(C).

[6] 5 U.S.C. 553(b)(3)(B).

[7] 28 U.S.C. 2461 note, section 4(b)(1).

[8] 5 U.S.C. 553(b).

(b) *Maximum civil monetary penalties.* The maximum civil monetary penalties as set forth in the referenced statutory sections are set forth in the table in this paragraph (b).

Statute	Adjusted civil monetary penalty
12 U.S.C. 324:	
Inadvertently late or misleading reports, inter alia	$3,787
Other late or misleading reports, inter alia	37,872
Knowingly or reckless false or misleading reports, inter alia	1,893,610
12 U.S.C. 334	275
12 U.S.C. 374a	275
12 U.S.C. 504:	
First Tier	9,468
Second Tier	47,340
Third Tier	1,893,610
12 U.S.C. 505:	
First Tier	9,468
Second Tier	47,340
Third Tier	1,893,610
12 U.S.C. 1464(v)(4)	3,787
12 U.S.C. 1464(v)(5)	37,872
12 U.S.C. 1464(v)(6)	1,893,610
12 U.S.C. 1467a(i)(2)	47,340
12 U.S.C. 1467a(i)(3)	47,340
12 U.S.C. 1467a(r):	
First Tier	3,787
Second Tier	37,872
Third Tier	1,893,610
12 U.S.C. 1817(j)(16):	
First Tier	9,468
Second Tier	47,340
Third Tier	1,893,610
12 U.S.C. 1818(i)(2):	
First Tier	9,468
Second Tier	47,340
Third Tier	1,893,610
12 U.S.C. 1820(k)(6)(A)(ii)	311,470
12 U.S.C. 1832(c)	2,750
12 U.S.C. 1847(b)	47,340
12 U.S.C. 1847(d):	
First Tier	3,787
Second Tier	37,872
Third Tier	1,893,610
12 U.S.C. 1884	275
12 U.S.C. 1972(2)(F):	
First Tier	9,468
Second Tier	47,340
Third Tier	1,893,610
12 U.S.C. 3909(d)	2355
12 U.S.C. 3110(a)	43,275
12 U.S.C. 3110(c):	
First Tier	3,462
Second Tier	34,620
Third Tier	1,730,990
15 U.S.C. 78u–2(b)(1):	
For a natural person	8,908
For any other person	89,078
15 U.S.C. 78u–2(b)(2):	
For a natural person	89,078
For any other person	445,390
15 U.S.C. 78u–2(b)(3):	
For a natural person	178,156
For any other person	890,780
15 U.S.C. 1639e(k)(1)	10,875
15 U.S.C. 1639e(k)(2)	21,749
42 U.S.C. 4012a(f)(5)	2056

By order of the Board of Governors of the Federal Reserve System, July 13, 2016.

Robert deV. Frierson,

Secretary of the Board.

Billing Code: 6210–01–P

[FR Doc. 2016–16969 Filed 7–19–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2015–1746; Amdt. No. 91–342]

RIN 2120–AK54

Changes to the Application Requirements for Authorization To Operate in Reduced Vertical Separation Minimum Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the FAA's requirements for an application to operate in Reduced Vertical Separation Minimum (RVSM) airspace and eliminates the burden and expense of developing, processing, and approving RVSM maintenance programs. As a result of this revision, an applicant to operate in RVSM airspace will no longer be required to develop and submit an RVSM maintenance program solely for the purpose of obtaining an RVSM authorization. Because of other, independent FAA airworthiness regulations, all aircraft operators remain required to maintain RVSM equipment in an airworthy condition.

DATES: Effective August 19, 2016.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How To Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Charles Fellows, Aviation Safety Inspector, Avionics Branch, Aircraft Maintenance Division, Flight Standards Services, AFS–360, Federal Aviation Administration, 950 L'Enfant Plaza North SW., Washington, DC 20024; telephone (202) 267–1706; email *Charles.Fellows@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Sections 106(f), 40113, and 44701 authorize the Administrator to prescribe regulations necessary for aviation safety. Section 40103 authorizes the Administrator to prescribe regulations to enhance the efficiency of the national airspace. This rulemaking is within the scope of these authorities because it removes an existing safety and airspace-related regulation that the FAA no longer finds necessary for aviation safety.

I. Overview of Final Rule

This action amends Appendix G of part 91 of Title 14 of the Code of Federal Regulations (14 CFR) by removing the requirement that any applicant for a Reduced Vertical Separation Minimum (RVSM) authorization must submit an RVSM maintenance program to the FAA for approval.

II. Background

The FAA's vertical separation standards establish the vertical distance that must separate aircraft routes in the national airspace system. In the early 1970's, rising air-traffic volume and fuel costs sparked an interest in reducing vertical separation standards for aircraft operating above flight level (FL) 290 (above 18,000 ft., flight levels are assigned in 500-ft. increments; FL290 represents an pressure altitude of 29,000 ft. referenced to a barometric pressure of 29.92 inches at sea level). At the time, the FAA required aircraft operating above FL290 to maintain a minimum of 2,000 ft. of vertical separation. Use of high-altitude routes was desirable, however, because the diminished atmospheric drag at these altitudes results in enhanced aircraft efficiency and a corresponding decrease in fuel consumption. Operators, therefore, sought and continue to seek not only the most direct routes, but also the most efficient altitudes for operation of their aircraft. Higher demand for these high-altitude routes has resulted in greater congestion.

In 1981, the FAA initiated the Vertical Studies Program. This program, in conjunction with the RTCA (formerly Radio Technical Commission for Aeronautics) Special Committee (SC)–150 and the International Civil Aviation Organization (ICAO) Review of General Concept of Separation Panel (RGCSP), determined:

- RVSM is "technically feasible without imposing unreasonably demanding technical requirements on the equipment;"
- RVSM could provide "significant benefits in terms of economy and en-route airspace capacity;" and
- Implementation of RVSM would require "sound operational judgment supported by an assessment of system performance based on: Aircraft altitude-keeping capability, operational considerations, system performance monitoring, and risk assessment."

In response to the findings made by the Vertical Separation Program, the FAA began a two-phase implementation of RVSM operations for aircraft registered in the United States (U.S.). In 1997, and as the first phase, the FAA published two amendments to part 91 of Title 14 of the Code of Federal Regulations (14 CFR). The first amendment established § 91.706 (Operations within airspace designed as Reduced Vertical Separation Minimum Airspace), which, among other things, allows operators of U.S.-registered aircraft to fly in RVSM airspace outside of the U.S. Appendix G (Operations in Reduced Vertical Separation Minimum (RVSM) Airspace), was added which contained a set of operational, aircraft design, and other standards applicable to those seeking to operate in RVSM airspace. *See Reduced Vertical Separation Minimum Operations,* (62 FR 17480; Apr. 9, 1997). Appendix G includes the requirement that all applicants for RVSM authorization must submit an approved RVSM maintenance program to the FAA.

The second phase of RVSM implementation occurred in October 2003, with the publication of a second RVSM-related FAA rulemaking. *Reduced Vertical Separation Minimum in Domestic* Airspace, (68 FR 61304; Oct. 27, 2003 and 68 FR 70132; Dec. 17, 2003). The 2003 rule introduced RVSM airspace over the U.S. and, like the 1997 rulemaking, required all U.S.-registered RVSM operators to comply with the application, operations, and aircraft design requirements of part 91, appendix G. The FAA's RVSM program allows for 1,000 ft. of vertical separation for aircraft between FL290 and FL410 in U.S. airspace. Before the 2003 rule, air traffic controllers could only assign Instrument Flight Rules (IFR) aircraft flying at FL290 and above to FL290, 310, 330, 350, 370, 390, and 410 since the existing vertical separation standard was 2,000 ft. After the rule changes, IFR aircraft could also fly at FL300, 320, 340, 360, 380, and 400—nearly doubling capacity within this particular segment of airspace, mitigating the fuel penalties attributed to flying at sub-optimum altitudes, and increasing the flexibility of air traffic control.

In 2008, the FAA reviewed its RVSM authorizations, which applied to more than 15,000 U.S.-registered aircraft. The FAA's evaluation found that the existing processes ensured compliance with RVSM operating requirements. At the same time, FAA representatives began meeting with the National Business Aviation Association (NBAA) to develop ways to streamline the RVSM application process to lower the burden for operators obtaining authorizations and reduce the FAA's workload associated with processing and granting these authorizations. The parties formed the RVSM Process Enhancement Team (PET) to focus on changes that could be accomplished without rulemaking. The PET completed its tasks in 2013. Among other things, it revised existing policies and guidance to facilitate more efficient processing of operator requests to change existing authorizations, and created a job aid to assist inspectors and standardize their review of operator applications. In a separate initiative, the FAA with input from industry determined that eliminating the redundant maintenance program component of the RVSM application would improve efficiency and reduce costs for both the agency and operators while maintaining the same high level of safety.

The requirement for an applicant to submit a maintenance program with the application for an RVSM authorization was promulgated in 1997 when most aircraft required significant design changes or inspections to qualify for RVSM operation. RVSM operations have become much more common since then. RVSM systems are now incorporated into aircraft type designs or have been incorporated through modifications performed using supplemental type designs or amended type designs. Operators must properly maintain those systems as part of their airworthiness obligations, making a separate RVSM maintenance program redundant and unnecessary.

A. Summary of the NPRM

In May 2015, the FAA issued an NPRM, (15 FR 30394; May 28, 2015) that proposed to amend the requirements for an application to operate in RVSM airspace. The FAA proposed to remove and reserve paragraph (b)(1), of section 3 of Appendix G of part 91, to eliminate the requirement that any operator seeking RVSM authorization under § 91.180 and § 91.706 had to develop and submit an RVSM maintenance program for FAA approval.

B. General Overview of Comments

The comment period for the NPRM closed on July 27, 2015. The FAA received 38 comments. The commenters included the National Air Transportation Association (NATA) and the National Business Aviation Association (NBAA). Twenty commenters supported the rule change in its entirety, twelve commenters provisionally supported the change while supplying additional comments, and eight commenters opposed the rule change. The FAA divided the issues raised in the comments into three categories addressing: (1) Safety concerns; (2) further enhancements to the RVSM authorization process; and (3) miscellaneous comments or recommendations.

III. Discussion of Public Comments and Final Rule

Safety Concerns

Although there were slight variations, many of the comments submitted in opposition to the proposal claimed that reducing the regulatory requirements for an RVSM authorization would reduce aviation safety.

The FAA reiterates that this final rule eliminates an application requirement, and leaves intact FAA requirements to maintain RVSM equipment and operate RVSM authorized aircraft in an airworthy condition. As described in the NPRM, the requirement to submit a maintenance program as part of an RVSM application was promulgated in an environment where RVSM technology was not firmly established and RVSM maintenance procedures were unproven. As RVSM equipment was installed on more aircraft, and confidence in established maintenance procedures increased, the requirement for each applicant to develop its own RVSM-specific maintenance procedures ceased to produce any appreciable safety benefit.

Sections 91.180 and 91.706 will continue to require operators to meet the equipment and performance standards specified in Appendix G to part 91. These performance standards were developed by the RTCA SC–150 and the ICAO RGCSP as the minimum performance standard for aircraft to conduct RVSM operation, and adopted by the FAA. In addition, §§ 91.405 and 91.407 continue to require operators to have their aircraft inspected and approved for return to service by authorized persons and otherwise maintained in accordance with part 43. Moreover, each person performing maintenance and preventive maintenance is required to do so using the methods, techniques, and practices prescribed in the manufacturer's maintenance manual, Instructions for Continued Airworthiness (ICA), or other means acceptable to the Administrator. The primary effect of this final rule is to remove the requirement for an applicant to submit an RVSM-specific maintenance program to the FAA as part of its application for an RVSM authorization.

One commenter stated that the requirement to maintain an aircraft in a condition for safe flight, as codified in § 91.7, applies only to a pilot, as opposed to an operator. The commenter stated that an operator is only required to maintain RVSM equipment because of its maintenance program obligations.

The FAA disagrees. As previously described, although this final rule eliminates an operator's obligation to submit a maintenance program as part of an RVSM application, operators will nevertheless continue to be required to maintain their RVSM equipment in accordance with applicable airworthiness standards. In particular, §§ 43.13, 91.405, and 91.407 continue to require aircraft to be inspected and approved for return to service in accordance with manufacturers' maintenance information or other material acceptable to the Administrator. Operators with maintenance programs, such as air carriers conducting operations under part 121, will continue to be required to maintain RVSM equipment in accordance with those programs.

Two commenters raised the issue of identifying required maintenance information. One commenter stated that most RVSM applicants do not have the latest RVSM maintenance information until they acquire that information in the course of preparing to apply for an RVSM authorization. Another commenter stated that ICA may not be available for all RVSM designs. As an example, the commenter referred to aircraft modified to meet RVSM performance standards under a supplemental type certificate (STC), rather than with equipment installed under a type certificate (TC), and also to aircraft modifications classified as minor changes to type design.

To the extent that these commenters assert that the requirement to submit a maintenance program as part of an RVSM application is necessary for operators to access or determine the appropriate maintenance instructions, the FAA disagrees. For many newer aircraft, RVSM capability is incorporated into the original type design. For other aircraft, incorporating alterations to meet RVSM performance requirements is classified as a major change to type design, and as such must be incorporated through an STC or an amended type certificate. In either case, § 21.50(b) requires, among other things, a TC or STC holder to make ICA available to any person required to comply with those ICA, including owners and operators. Each owner or operator should, therefore, have access to all required maintenance and preventive maintenance information.

One commenter stated that he services aircraft that have been upgraded to RVSM capability by way of STCs, and removing the RVSM maintenance program requirement would remove the information from the aircraft records that identifies which STC is installed. The FAA disagrees. When STCs are incorporated into aircraft they constitute major changes to the aircraft type design. Identification of the design change and associated ICA are recorded in the appropriate aircraft records. Section 21.50 requires design approval holders to make ICA available to any owner, operator, or other person required to comply with their terms.

Another commenter stated that submission of an RVSM maintenance program is necessary to identify necessary repairs to RVSM and other aviation data equipment and that the FAA has a statutory obligation, under 49 U.S.C. 44701, to promote the safe flight of civil aircraft. The FAA disagrees that submission of an RVSM maintenance program with an RVSM application for authorization is necessary to identify repairs for the reasons previously stated. Removal of the requirement will not negatively impact the safe flight of civil aircraft or conflict with the FAA's obligations under 49 U.S.C. 44701.

Among the commenters who raised safety concerns, several recommended alternatives. One commenter recommended that the FAA require operators to "identify practices" for the maintenance of RVSM equipment (alternative 2 considered in the proposal), but without requiring that these practices be submitted as part of an application. The same commenter also recommended that the FAA modify the alternative to specifically require each operator to identify the TC or STC holder's ICA and ensure each is listed in the operator's maintenance tracking system.

The FAA believes that adopting the proposed alternative would provide no greater safety benefit and would do less to reduce the unnecessary burden on industry than eliminating the requirement to submit an RVSM maintenance program for approval. The commenter's recommendation would continue to require operators to provide redundant paperwork as part of each RVSM application. The FAA also believes that requiring an applicant to identify maintenance practices, in addition to the existing requirements to follow those practices, would not meaningfully contribute to aviation safety. As stated previously, § 21.50 requires design approval holders to make ICA available to any owner, operator, or other person required to comply with the terms of those ICA.

With respect to the recommendation to require operators to track RVSM-specific information in a maintenance tracking system, the FAA agrees that any operator using a maintenance tracking system should use that system to track the maintenance of RVSM equipment as identified in the appropriate ICA. However, some operators—such as part 91 operators—are not required to develop maintenance tracking systems. To the extent that the commenter is recommending that the FAA require part 91 operators to implement maintenance tracking systems, the recommendation is outside the scope of this rulemaking.

One commenter observed that the FAA often rejects, for various reasons, maintenance programs that accompany operators' applications for RVSM authorizations. The commenter stated that the existence of these rejections is evidence that continued FAA oversight is necessary to maintain safety. The FAA disagrees. The FAA often rejects a program submission or requests that additional revisions be made to an application for reasons related to an operator's lack of familiarity with the process for developing a program and submitting an application. These issues may be unrelated to the adequacy of a particular maintenance program. Moreover, many part 91 operators applying for RVSM authorizations do not perform maintenance themselves—RVSM or otherwise—and are reproducing plans developed by an original equipment manufacturer. Regardless of who performs the maintenance, §§ 91.405 and 91.407 require each aircraft owner or operator to have the aircraft inspected and approved for return to service by an individual or entity authorized by § 43.7.

One commenter stated that the expense and effort required to create an RVSM maintenance program helps to ensure each operator's commitment to safety. Another commenter stated that the requirement to develop and submit a maintenance program encourages operators to adhere to the appropriate maintenance information. The FAA believes that imposing a requirement on operators to submit a maintenance program for approval imposes a significant cost on operators that is not an effective or appropriate means of obtaining an operators' commitment to safety. As previously described, operators will continue to be required to maintain their aircraft in an airworthy condition in accordance with existing regulations.

Further Enhancements to the RVSM Authorization Process

Three comments were received that the proposal "did not go far enough," and recommended that the FAA eliminate RVSM approvals entirely. For example, one commenter stated that the industry's experience in safely installing, maintaining, and operating RVSM equipment demonstrates that there is no longer a need for RVSM approvals. The FAA proposed only to remove the requirement to submit a maintenance program from the application for RVSM approval. The FAA did not propose to eliminate RVSM approvals entirely. The commenter's recommendation is outside the scope of this rulemaking.

One individual commenter recommended that, in cases where an operator was applying to operate an aircraft which was previously listed on an authorization, the FAA should issue a temporary, interim RVSM approval. The commenter stated that the NPRM underestimated the costs of compliance with the FAA's RVSM approval program, because an operator awaiting RVSM authorization consumes significant additional funds flying below optimal altitudes. Operators are required to apply for a new authorization whenever an aircraft changes ownership or registration, regardless of whether the underlying aircraft is modified. The FAA did not propose to introduce interim RVSM authorizations. The commenters' recommendation is, therefore, outside the scope of this rulemaking.

Miscellaneous Comments or Recommendations

One commenter stated that a reduction to the FAA's workload is not a legitimate rationale for FAA rulemaking and that the FAA's goal and statutory obligation is to promote safe flight of civil aircraft. The FAA notes that this final rule eliminates a requirement that is no longer necessary to provide the level of safety required for these operations. The FAA is required by numerous statutes and executive orders to consider both the costs and benefits of its regulations and to adopt proposals that are cost justified. Costs incurred by the FAA are a legitimate factor to be considered in accomplishing this analysis. *See, e.g.,* 5 U.S.C. 601–612 (Regulatory Flexibility

Act); Executive Order 13563; Executive Order 12866.

One individual commenter stated that the industry assumes this rule change would allow an operator to obtain RVSM approval by submitting no more than a letter to the FAA. The FAA disagrees. The requirement to submit an RVSM maintenance program, a requirement eliminated by this rule, was only one of three components of an RVSM application. Under §§ 91.180, 91.706, and Appendix G to part 91, the FAA continues to require an applicant to submit documentation establishing that its aircraft is RVSM compliant, and that the applicant's crew has adequate knowledge of RVSM requirements, policies, and procedures as set forth in § 3(c)(2) of Appendix G. For part 121 and part 135 operators, this requires initial and recurring pilot training as specified in § 3(b)(2) of Appendix G.

One individual commenter recommended that the FAA eliminate the requirement for maintenance program approval only with respect to aircraft that are RVSM capable "under a TC." The commenter recommended that the FAA continue to require maintenance program approval for any aircraft that is RVSM capable as a result of an alteration performed in accordance with an STC because an STC indicates a major deviation from the aircraft's original type design and maintenance procedures would not be listed in the manufacturer's recommended procedures.

The FAA disagrees that aircraft with RVSM equipment installed pursuant to an STC should be treated differently from aircraft with RVSM equipment installed as part of an original or amended type design. Both TC and STC holders must develop ICA, and § 43.13 continues to require maintenance and preventive maintenance to be performed in accordance with the current manufacturer's maintenance manual, ICA, or other methods, techniques, and practices acceptable to the Administrator. Because ICA are available regardless of whether RVSM equipment is installed under a TC or an STC, and because all operators are equally obligated to maintain their equipment in accordance with this maintenance information, the FAA finds no reason to differentiate between these two kinds of operators.

One individual commenter stated that avionics technology has undergone a major transformation in the last 15 years, moving away from discrete components and towards more fully integrated systems. The commenter recommended that authorizations should similarly be analyzed and approved in a more unified manner, to reduce the number of individual performance-based approvals. The commenter's recommendation that the FAA review all performance-based approvals in a single application is outside the scope of this rulemaking.

Several individual commenters, both supporting and opposing the proposal, stated that the burden on operators to obtain approval of an RVSM maintenance program could be reduced substantially by standardizing what is required by FAA inspectors in an RVSM application. The FAA has published and continues to provide guidance to its inspectors on the requirements for the issuance of an RVSM authorization. In addition to the guidance, the FAA has developed job aids to assist in the development of an RVSM program manual. The agency believes these ongoing efforts will continue to increase standardization in the application process.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. Because this rulemaking is a retrospective regulatory review, the expected outcome would be a cost savings with positive net benefits. The FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and procedures. Such a determination has been made for this final rule. The reasoning for this determination follows:

This rulemaking responds to requests from industry and FAA program offices. The rule removes the requirement that operators seeking RVSM authorization must submit an RVSM maintenance program for FAA approval. It eliminates the considerable burden and expense to operators and FAA safety inspectors of developing, processing, and approving RVSM maintenance programs.

When the former requirement was established, RVSM systems were yet to be incorporated into initial aircraft type designs. This is no longer the case. RVSM systems are now incorporated into initial aircraft type designs, and operators must properly maintain these systems as part of their airworthiness obligation. In light of these developments, the requirement for RVSM applicants to submit specialized maintenance programs is redundant. Removing this redundancy has no effect on aviation safety.

One commenter stated the NPRM underestimated the cost of compliance, because an operator awaiting RVSM authorization incurs cost flying below optimal altitudes. As the operators are already required to incur this cost, this rule does not change this cost. The FAA did not propose to introduce interim RVSM authorization, therefore no new cost are required. The FAA notes that no other comments were received on our NPRM cost-savings determination or methodology. While the same methodology is used here, the FAA has updated the number of maintenance programs expected to be submitted and the wage for the safety inspector to 2015 dollars.

The relief to part 91 operators and FAA safety inspectors from the streamlining of regulations equals the number of RVSM maintenance programs approved (including growth) multiplied by the costs per operator of submitting an RVSM maintenance program for FAA approval. To that result, the FAA added the number of RVSM maintenance programs approved multiplied by the cost of an FAA safety inspector to review and approve an RVSM maintenance program multiplied by the average number of hours FAA safety inspectors expend reviewing and approving each RVSM maintenance program. The value for these variables is shown below.

CY 2015—Number of maintenance programs submitted to FAA for approval[1]	Average annual growth (2010–2015) in the number of maintenance programs submitted to FAA for approval (used as forecast of 2016–2020 growth)	Operator cost for submitting a maintenance program to the FAA for approval[2]	Hours expended by FAA safety inspectors reviewing maintenance programs for approval[3]
2,437	4.46%	[4] $5,000	12

Applying these estimates, the FAA anticipates that operators would experience cost savings of approximate $12.7 million in year one of implementation. The FAA calculated this figure by multiplying the estimated number of maintenance programs expected to be submitted to the FAA for approval during CY 2016 (2,546 approvals) by each operator's cost for submitting a RVSM maintenance program to the FAA for approval ($5,000).

In addition to the cost savings realized by operators, eliminating the requirement would free 30,552 hours for FAA safety inspectors to perform alternative tasks during year one of implementation. The hours are calculated by multiplying the average number of hours FAA safety inspectors expend reviewing and approving each RVSM maintenance program submitted (12 hours) by the number of RVSM maintenance program approvals estimated for CY 2016 (2,546 approvals). The annual cost savings of $1.4 million to the FAA equals the 30,552 hours multiplied by the FAA fully-burdened wage of $45.96.[5] As per Department of Transportation (DOT) guidance, the FAA assumes that there will be a 1.2 percent projected annual increase in real wages.[6]

Based on these calculations, the cost savings to operators and the FAA during the first five years of the rule's implementation will be approximately $77.5 million ($67.6 million present value). The results are presented below:

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[1] FAA National Program Tracking and Reporting Subsystem (NPTRS).

[2] National Business Aviation Association—Part 91 Operator Cost for Submitting an RVSM Approval.

[3] FAA Safety Inspectors involved in RVSM authorization processing at FAA Flight Standards District Offices (FSDO).

[4] This amount consists of $3,123 in operator costs for submitting an application form and supporting documentation to a RVSM manual preparation service, and then reading, understanding, signing, and submitting the completed RVSM maintenance program manual to the FAA for approval. The remaining $1,977 is an approximation of the amount paid by an operator for RVSM manual preparation services. The estimate of $1,977 is an average of quotes provided on the Internet by seven companies providing this service. These seven quotes ranged from $795 to $3,850.

[5] Source: 2015 General Schedule Salary Table as published by the U. S. Office of Personnel Management. The salary used for calculating costs savings is the fully-burdened hourly wage for a GS 12 Step 5, which is the mid-range salary for this position.

[6] Office of the Secretary of Transportation Memorandum, "Revised Departmental Guidance on Valuation of Travel Time in Economic Analysis", July 2014.

Part 91 Operator/FAA	2016	2017	2018	2019	2020	Total
Number of RVSM Approvals Per Year (forecasted growth 4.46%)	2,546	2,659	2,778	2,902	3,032	13,917
Cost Savings Per RVSM approval	$5,000	$5,000	$5,000	$5,000	$5,000	
Total Operator Cost Savings	$12,730,000	$13,295,000	$13,890,000	$14,510,000	$15,160,000	$69,585,000
Operator Net Present Value at 7%	$12,730,000	$12,425,234	$12,132,064	$11,844,482	$11,565,491	$60,697,271
Hours to review one program	12	12	12	12	12	
Hours Saved Annually	30,552	31,908	33,336	34,824	36,384	167,004
Salary Table 2014-GS middle of the scale GS-12 Step 5	$45.96	$46.51	$47.07	$47.63	$48.20	
Savings Per Review	$552	$558	$565	$572	$578	
Annual FAA Savings	$1,404,170	$1,484,041	$1,569,126	$1,658,667	$1,753,709	$7,869,712
FAA Net Present Value at 7%	$1,404,170	$1,386,954	$1,370,535	$1,353,966	$1,337,896	$6,853,522
Total Cost Savings	$14,134,170	$14,779,041	$15,459,126	$16,168,667	$16,913,709	$77,454,712
Total Cost Savings (PV)	$14,134,170	$13,812,188	$13,502,599	$13,198,449	$12,903,387	$67,550,793

Entries may not exactly add to totals due to rounding.

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B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Under the RFA, the FAA must determine whether a rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and revenue thresholds that vary depending on the affected industry.[7] In most cases, the FAA cannot determine the size of part 91 operators because financial and employment data for privately held entities is sparse. Nevertheless, the FAA believes the number of small business entities is substantial. The FAA estimates that this rulemaking will save each affected small entity $5,000 per RVSM authorization.

Based on the criteria used in the initial regulatory flexibility analysis and used again here, this rule will impact a substantial number of part 91 operators. Accordingly, the FAA prepared a final regulatory flexibility analysis for part 91 operators, as described in the next section. The FAA received no comments to the initial regulatory flexibility analysis for this rule.

Regulatory Flexibility Analysis

Under section 603(b) of the RFA (as amended), each regulatory flexibility analysis is required to address the following points: (1) Reasons the agency considered the rule, (2) the objectives and legal basis for the rule, (3) the kind and number of small entities to which the rule will apply, (4) the reporting, recordkeeping, and other compliance requirements of the rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the rule.

Reasons the FAA Considered the Rule

All part 91 operator RVSM-related obligations are required by FAA airworthiness regulations to maintain RVSM equipment in an airworthy condition. Thus, the requirement that operators seeking RVSM authorization to develop and submit an RVSM maintenance program for FAA approval, is redundant.

The Objectives and Legal Basis for the Rule

The FAA's authority to issue rules regarding aviation safety is found in §§ 106, 40113, and 44701 of 49 U.S.C., which authorize the FAA Administrator to prescribe regulations necessary for aviation safety. Section 40103 authorizes the Administrator to prescribe regulations to enhance the efficiency of the national airspace. This rulemaking is within the scope of these authorities because it removes existing safety and airspace-related regulations that the FAA no longer finds necessary to protect aviation safety.

The Kind and Number of Small Entities to Which the Rule Will Apply

This final rule will affect a substantial number of part 91 operators. The FAA estimates that this proposed rulemaking would save each affected small entity $5,000 per RVSM authorization.

The Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

All Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

This final rule eliminates an application requirement for submission of an RVSM maintenance program and leaves intact current requirements to maintain RVSM equipment and operate RVSM authorized aircraft in an airworthy condition. Sections 43.13, 91.405, and 91.407 continue to require aircraft to be inspected and approved for return to service in accordance with manufacturers' maintenance information or other material acceptable to the Administrator. Operators with approved maintenance programs will continue to be required to maintain RVSM equipment in accordance with their approved programs.

Other Considerations

Alternatives

Alternative 1: Retain the current requirement for submission of an RVSM maintenance program for approval.

Analysis: Without changes to Appendix G of part 91, any operator seeking RVSM authorization would continue to be required to submit an RVSM maintenance program. A non-commercial operator with no requirement to hold a maintenance program for any other performance-based authorization would nevertheless be required to submit an RVSM maintenance program for approval—despite the fact that the operator is already required by FAA regulations to maintain RVSM equipment in accordance with its type design and in a condition for safe operation. Furthermore, the review and approval of this information would continue to consume FAA resources.

Alternative 2: Replace the current Appendix G requirement that operators include an "approved RVSM maintenance program" with a requirement that operators "identify practices" for the maintenance of RVSM equipment.

Analysis: Relaxing Appendix G application requirements to allow operators to "identify practices" for the maintenance of RVSM equipment would allow a non-commercial operator to cite the applicable manufacturer's maintenance manual or ICA. This alternative would likely reduce the time and resources spent by operators and the FAA in compiling and reviewing RVSM applications. This alternative is undesirable, however, because it fails to address the absence of any safety benefits associated with continuing to require an RVSM maintenance program as a component of an RVSM application.

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[7] Thresholds are based on the North American Industry Classification System (NAICS). The NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

The FAA expects this rule will save each affected small entity $5,000 per RVSM authorization. Over a 5-year period, the number exceeds $10,000 per RVSM authorization. While the rule may not have a significant economic impact, it would have a positive impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and, therefore, no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312d (regulatory documents covering administrative or procedural requirements) and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 require the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend Appendix G, Section 3 by removing and reserving paragraph (b)(1).

Issued under authority provided by 49 U.S.C. 106(f), 40103, 40113, and 44701(a) in Washington, DC, on July 12, 2016.

Michael Huerta,
Administrator.

[FR Doc. 2016–17155 Filed 7–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 417, 420, 431, and 435

[Docket No.: FAA–2014–0418; Amdt. Nos. 417–4, 420–7, 431–4 and 435–3]

RIN 2120–AK06

Changing the Collective Risk Limits for Launches and Reentries and Clarifying the Risk Limit Used To Establish Hazard Areas for Ships and Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending its regulations concerning the collective risk limits for commercial launches and reentries. These changes include: Separating the risk limits for commercial launches and reentries; aggregating the risk posed by impacting inert and explosive debris, toxic release, and far field blast overpressure; limiting the aggregate risk for these three hazards to 1×10^{-4}; reducing the number of significant digits used in launch and reentry risk analysis; and various non-substantive clarifying revisions. These changes update FAA regulations to reflect the United States Government's greater experience with commercial launch and reentry and to align more closely the FAA's risk standards with those of other United States Federal agencies, while continuing to protect public safety.

DATES: Effective September 19, 2016.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How To Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Rene Rey, AST–300, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7538; email *Rene.Rey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as amended and codified at 51 United States Code (U.S.C.) Subtitle V—Commercial Space Transportation, Ch. 509, Commercial Space Launch Activities, 51 U.S.C. 50901–50923 (the Act), authorizes the Secretary of Transportation and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry, and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 51 U.S.C. 50904, 50905. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 51 U.S.C. 50905. Section 50901(a)(7), in relevant part, directs the FAA to regulate private sector launches, reentries, and associated services only to the extent necessary to protect the public health and safety and safety of property. The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches and reentries by the private sector. 51 U.S.C. 50903.

I. Overview of Final Rule

The FAA is adopting this final rule to revise certain regulations related to the collective risk limits for commercial launches and reentries in part 417 (Launch Safety), part 420 (License to Operate a Launch Site), part 431 (Launch and Reentry of a Reusable Launch Vehicle (RLV)), and part 435 (Reentry of a Reentry Vehicle Other Than a Reusable Launch Vehicle (RLV)) of Title 14 of the Code of Federal Regulations (14 CFR).

This final rule divides the risk analysis for launch and reentry, providing a separate risk budget for each. For all launches, regardless of vehicle type, this final rule requires a single expected number of casualties (E_c) be calculated by aggregating the risk posed to the collective members of the public from three hazards: Impacting and inert explosive debris, toxic release, and far field blast overpressure. This final rule also revises the acceptable risk threshold for launch from an E_c of 30×10^{-6} for each hazard to an E_c of 1×10^{-4} for all three hazards combined. Furthermore, this final rule expresses the revised E_c limit using the correct number of significant digits to properly represent the uncertainty in E_c calculations. This final rule changes the FAA's collective risk limits for launch and reentry to more closely match the E_c standard currently used by the United States (U.S.) Air Force and the National Aeronautics and Space Administration (NASA) for government missions, and to account for the level of uncertainty that exists in the E_c calculations.

This final rule also makes two revisions to § 417.107 to clarify the launch and reentry regulations. The first revision removes the phrase "including each planned impact" from § 417.107(b)(1) to clarify that public risk is assessed from lift-off through orbital insertion for orbital launches and from lift-off to final impact for suborbital launches. The second revision modifies § 417.107(b)(3) and (b)(4) to make transparent the criteria for establishing hazard areas by replacing the references to equivalent levels of safety for water borne and aircraft hazard areas required for launch from a federal launch range with the actual levels of safety provided by hazard areas for launches from a federal range in 2006, the year the FAA promulgated § 417.107. Under § 417.107(b)(3), a hazard area for water borne vessels satisfies part 417 if the probability of impact with debris capable of causing a casualty on any potential water borne vessel within the hazard area does not exceed 0.00001 (1×10^{-5}). Under § 417.107(b)(4), a hazard area for aircraft will satisfy part 417 if the probability of impact with debris capable of causing a casualty on any potential aircraft within that hazard area does not exceed 0.000001 (1×10^{-6}). These clarifying edits do not change the risk requirement for launch licensees or launch license applicants.

Summary of the Costs and Benefits of the Final Rule

The final rule will result in net benefits for both the commercial space transportation industry (industry) and government by reducing the number of waivers that must be prepared by the industry and processed by the government for launches with an aggregate E_c between 90×10^{-6} and 149 $\times 10^{-6}$, and by averting unnecessary mission delays and scrubs. The resulting savings for both the industry and the FAA from reducing the number of waivers range from a low estimate of approximately $8.3 million to a high estimate of $16.7 million ($5.8 million and $11.7 million present value at a 7% discount rate, respectively).

II. Background

An operator conducts a launch using an expendable launch vehicle (ELV) or a reusable launch vehicle (RLV). An ELV is a launch vehicle whose propulsive stages are flown only once. 14 CFR 401.5. An RLV is a launch vehicle that is designed to return to Earth substantially intact and, therefore, may be launched more than one time or that contains vehicle stages that may be recovered by a launch operator for future use in the operation of a substantially similar launch vehicle. *Id.* Reentry is conducted with RLVs or other reentry vehicles. A reentry vehicle is a vehicle designed to return from Earth orbit or outer space to Earth substantially intact, and includes a reentering RLV. *Id.*

Parts 417, 420, 431, and 435 (collectively, the collective risk regulations) limit the collective risk that a commercial launch or reentry may pose to the public. The FAA's collective risk regulations, as originally promulgated, were based primarily on E_c limits that the U.S. Air Force imposed on launches from federal launch ranges at the time the FAA began establishing its own E_c limits.[1] In addition to imposing E_c limits on risk posed by launches and reentries to collective members of the public, these regulations also impose separate limits on the risk posed by these operations to individual members of the public.

In July 2014, the FAA published in the **Federal Register** a notice of proposed rulemaking (2014 NPRM) proposing various revisions to the FAA's launch and reentry regulations.[2] This final rule adopts the proposal outlined in the 2014 NPRM, with minor modifications and clarifications in response to comments from the public.

A. Statement of the Problem

Prior to the 2014 NPRM, developments in the industry and among U.S. Government agencies led the FAA to question its collective risk regulations. In 2010, the U.S. Air Force, after conducting over 5,000 launches under a 30×10^{-6} E_c limit, determined that it could increase its E_c limit from 30×10^{-6} per hazard to 100×10^{-6} for the aggregate public risk associated with debris, toxicity, and far field blast overpressure without harming public safety. The U.S. Air Force's new E_c standards also apply a separate E_c limit to reentry, limiting reentry E_c to 100×10^{-6} for the aggregate public risk associated with all hazards, which typically include debris, toxicity, and far field blast overpressure. In addition, in 2010 NASA also revised its risk acceptability policy to limit the E_c from launch and reentry missions to 100×10^{-6} each.

Because the FAA's collective risk regulations were based on the U.S. Air Force's former 30×10^{-6} limit—a limit that both the U.S. Air Force and NASA, after considerable experience, have now revised—the FAA questioned in the 2014 NPRM whether its collective risk limits, revised by this final rule, continued to represent appropriate public risk criteria for commercial ELV and RLV operations. In addition, the FAA's own experience led the agency to question whether those E_c limits created an obstacle to NASA's implementation of the National Space Policy (*e.g.*, NASA proposed commercial flights to the International Space Station that would not meet FAA's current E_c limits).[3]

Finally, the FAA also sought to address in the 2014 NPRM whether its former collective risk regulations sufficiently distinguished between commercial launch and reentry risk. Instead of regulating risk based on whether the operation in question was a launch or a reentry, the former collective risk regulations focused on the type of vehicle used in the operation, namely whether the vehicle was an ELV, RLV, or a reentry vehicle.

B. Summary of the 2014 NPRM

The 2014 NPRM proposed several revisions to the FAA's risk framework. These proposals included: Aggregating launch hazards and establishing an E_c limit of 1×10^{-4}, thus reducing the number of significant digits in a launch or reentry risk analysis; separating the risk limits for the launch and reentry of a reentry vehicle; including toxic release as a hazard in the risk analysis for reentries; and clarifying the acceptable risk threshold for impact with ships and aircraft in hazard areas. For more detailed information, interested parties may consult the preamble of the 2014 NPRM.

C. General Overview of Comments

The comment period for the July 2014 NPRM closed on October 20, 2014. The FAA received comments from nine commenters, including ACTA Inc. (ACTA), Blue Origin, LLC (Blue Origin), Lockheed Martin Corporation (Lockheed Martin), Orbital Sciences Corporation (Orbital Sciences), Sierra Nevada Corp. (Sierra Nevada), Space Exploration Technologies Corp. (SpaceX), XCOR Aerospace (XCOR), and two individual commenters. Most of the commenters supported the proposed changes, and some suggested additional changes that are discussed more fully below. Several commenters fully supported the proposed changes, and one commenter opposed the proposed changes. The comments focused on the following general areas of the proposal:

- Individual risk limits
- Separation of launch and reentry
- Significant figures
- Ship and aircraft hazard areas
- Including toxic release in the reentry risk analysis

III. Discussion of Public Comments and Final Rule

A. Individual Risk

As discussed in the 2014 NPRM, this final rule does not substantively revise the FAA's limitation on risk posed to individuals found in §§ 417.107, 431.35, and 435.35.[4] The individual risk limits in § 417.107(b)(2) prohibit launch risk to an individual from exceeding 1×10^{-6} for each hazard (debris, toxic release, and far field blast overpressure) for launch of an ELV. For the launch of a RLV or other reentry vehicle, §§ 431.35(b)(1)(ii) and 435.35 continue to prohibit the risk to an individual from exceeding 1×10^{-6} per mission. The FAA proposed no change to this risk limit, so any change now would be outside the scope of the proposal. Nonetheless, the comments raise issues of interest and are addressed below.

XCOR agreed that no change is necessary because it is easier for launch operators to mitigate risk to a particular individual than the collective public, and because the FAA has never waived individual risk for launches in the past. On the other hand, Orbital Sciences recommended that the FAA "[e]xamine historical data for all U.S. launches to determine the highest level of risk realized by any individual member of the public and propose a more realistic . . . risk [figure] based on this successful precedent." Orbital Sciences also recommended that the FAA adopt "identical risk limits for individual members of the public" for U.S. Government and commercial launches.

The FAA disagrees with Orbital Sciences' recommendation to revise the individual risk threshold. Unlike the FAA's collective risk limitation, the FAA is aware of only a small number of historical U.S. government launches for which the predicted individual risk for any one member of the public exceeded

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[1] *See, e.g., Commercial Space Transportation Licensing Regulations, Final Rule (Launch Licensing Rule),* 64 FR 19586, 19605 n.11 (Apr. 21, 1999).

[2] *Changing the Collective Risk Limits for Launches and Reentries and Clarifying the Risk Limit Used to Establish Hazard Areas for Ships and Aircraft,* 79 FR 42241 (July 21, 2014).

[3] *See* National Space Policy of the United States of America (June 28, 2010), available at *https://www.whitehouse.gov/sites/default/files/national_space_policy_6-28-10.pdf.*

[4] However, it should be noted that the FAA made a non-substantive change to 417.107(b)(2) to improve consistency and clarity.

1×10^{-6}. From a statistical perspective, this casualty-free launch record is the expected outcome because 1×10^{-6} corresponds to a one-in-a-million chance of a particular person being a casualty and there have been no more than a few thousand launches from the United States. The FAA therefore finds insufficient evidence at this time to justify relaxing the current individual risk limits, which are an integral part of an interdependent set of safety requirements that have produced a flawless public safety record for U.S. launches and reentries. Furthermore, the FAA notes that limiting risk to individual members of the public at the 1×10^{-6} level is consistent with the consensus standard produced by U.S. range safety organizations as adopted by NASA and the U.S. Air Force.

ACTA stated that maintaining the current individual risk thresholds perpetuates inconsistent individual risk standards for ELVs, RLVs, and reentry vehicles. ACTA observed that § 417.107(b)(1)(ii) limits individual risk to 1×10^{-6} for each hazard for ELVs. ACTA stated that this was inconsistent with the risk threshold for RLVs and reentry vehicles in § 431.35(b)(2)(ii), which limits total risk to an individual to 1×10^{-6} over the course of the entire mission, without any reference to specific hazards. As a result, ACTA argued, ELV missions would have a different individual risk criterion than missions involving an RLV or other reentry vehicle.

ACTA's recommendation to harmonize all individual risk limits is outside the scope of the current rulemaking. Also, the FAA has insufficient data to justify a change to the individual risk criteria for either launch or reentry, and thus no change was proposed. Finally, the current regulatory framework governing individual risk for launch and reentry risk has successfully protected the public since 2000.

B. Separating E_c for Launch and Reentry

The FAA proposed to separate the E_c limits for the launch and reentry of all reentry vehicles, instead of applying a single risk limit to both phases of a mission.[5]

Blue Origin, Lockheed Martin, Orbital Sciences, and SpaceX fully supported the proposal to separate launch and reentry risk. ACTA supported the proposal to separately assess launch and reentry risk if reentry occurs after a health check, but noted that "separation of risk budgets for launch and reentry ignores the risk contribution from a failure to initiate a planned reentry." In particular, ACTA noted that "[t]here does not appear to be any consideration for consequences if the health check prior to reentry fails. . . . [The vehicle's] orbit will eventually degrade and re-enter . . . [and the] risk of this potentially uncontrolled re-entry (if the health of the vehicle can never be restored) appears to be neglected."

ACTA is correct that the FAA does not regulate the risk associated with reentry vehicles or parts of reentry vehicles that do not initiate or attempt to initiate a purposeful reentry. As the FAA has explained, the Act limits the FAA's licensing of reentry to scenarios involving purposeful reentry;[6] therefore, the FAA is prohibited from considering the "possibility of a random uncontrolled reentry that occurs as a result of a reentry vehicle ceasing to function upon arrival in orbit."[7]

Although the 2014 NPRM did not propose to change the requirement that suborbital launches and reentries be subject to a single launch E_c, the FAA invited comment on the issue. Sierra Nevada commented that suborbital flights also should have separate risk limits for launch and reentry because each phase of flight required independent operational decisions.

XCOR, on the other hand, commented that suborbital vehicles should continue to have a single risk limit because, for a suborbital launch, "reentry is a physical inevitab[ility]"; there is "no intervening event between launch and reentry"; and that "reentry is closely proximate in time—four minutes, for most concepts to launch."

The FAA agrees with XCOR that a suborbital mission should continue to be analyzed using a single risk budget for the entire mission, from launch through final impact, because there is no intervening event between launch and reentry and because reentry is a physical inevitability. Moreover, separating launch and reentry risk limits for suborbital flights is beyond the scope of this final rule because it would require revising the definitions of "reentry" and "launch" found in § 401.5, changes the NPRM did not propose.

The FAA will require separate analysis of the risks associated with launch and reentry because the two are separate events. A launch may not always be successful, and a single risk limit that encompasses both launch and reentry makes reentry risk calculations unnecessarily dependent on the probability of failure associated with launch. The FAA leaves unchanged, however, the requirement that suborbital launches and reentries must comply with a single launch E_c limit that encompasses the entire operation from launch through final impact.

C. Revising the Acceptable Risk Standard

The FAA proposed to revise the acceptable risk limit for launch to 1×10^{-4}, encompassing all three hazards—debris, toxic release, and far field blast overpressure. This would amend the risk framework's three components by aggregating the analysis of debris, toxics, and far field blast overpressure; establishing a new, unified risk standard for the three primary hazards combined; and revising the risk standard to be expressed using one significant figure. The commenters addressed each of these issues separately.

1. Aggregating E_c for Debris, Toxics, and Far Field Blast Overpressure

ACTA, Orbital Sciences, and SpaceX supported the proposal to aggregate risk calculations. The FAA received no negative comments on this component of the proposal. Therefore, this final rule replaces the prior requirement to satisfy three separate E_c criteria (one each for debris, toxics, and far field blast overpressure) with a single E_c criterion accounting for all three primary hazards.

2. Revising the Number of Significant Figures

Numerous commenters, including Blue Origin, Lockheed Martin, Orbital Sciences, and SpaceX, supported the FAA's proposal to express the risk threshold using one significant figure. Lockheed Martin stated that the proposal "would improve efficiency and maintain a level of safety for commercial launches that is commensurate with the current high level of safety associated with civil and military launches."

ACTA and an individual commenter advocated against changing the number of significant figures. An individual commenter recommended that one significant figure would be more appropriate at the level of 1×10^{-5}. ACTA agreed with the proposal to increase the risk limitations insofar as "it is reasonable to apply a higher acceptability limit (around 100 ×

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[5] The separation of E_c limits for launch and reentry affects §§ 431.35(b) and 435.35.

[6] Waiver of Acceptable Mission Risk Restriction for Reentry and a Reentry Vehicle, 75 FR 75619, 75620 (Dec. 6, 2010).

[7] The Waiver explained that "[b]ecause a random uncontrolled reentry arising out of a reentry vehicle ceasing to function upon arrival in orbit is not purposeful and is thus not licensed, an interpretation that section 431.35 applies to this type of reentry would conflict with" limitations on the FAA's authority.

10^{-6})," but also stated the FAA's proposal to both raise the limit and reduce the number of significant figures resulted in an effective increase of "the acceptable risk limit to 50% above current Air Force and NASA practice." Referring to the effects of revising the number of significant figures, ACTA stated that "the difference between 100×10^{-6} and 149×10^{-6} is real and significant." ACTA also stated that, because of this "effective" 50% increase, the FAA's proposal would not maintain safety levels for commercial space transportation commensurate with the current requirements for civil and military reentries. Finally, ACTA also disagreed with the FAA's rationale for increasing the acceptable risk limit. In particular, ACTA stated that it is inappropriate to exceed the Range Commanders Council (RCC) 321 consensus standard; the success of a relatively small number of missions operated under waivers is statistically irrelevant; and the continued use of waivers is reasonable in a developing industry.

The FAA disagrees that the difference between 100×10^{-6} and 149×10^{-6} is real and significant because the uncertainty associated with many of the variables that go into determining E_c are too large to justify using more than one significant digit. The FAA and others, including ACTA, have performed extensive uncertainty analyses for both launch area and downrange overflight. These analyses accounted for aleatory—irreducible—and epistemic—modeling—sources of uncertainty, including the inherent variability in the impact distribution due to wind and lift effects for irregular debris following failure; probability of failure; casualty area for people in shelters that are impacted by debris; size of the debris impact probability distribution; yield from exploding propellant and propellant tanks; probability of injury from a blast wave for people in buildings or unsheltered; and population density. Uncertainty also exists in the E_c estimate for overflight because of the uncertainty in the time of launch,cargo debris, and different methods to characterize the normal trajectory dispersions based on input data provided by the launch operator.

A standard public risk analysis for launch or reentry produces a single E_c value, but these state-of-the-art analyses demonstrate that the modeling uncertainties are too large to justify calculating E_c to more than one significant figure.[8] In fact, the uncertainty in a vehicle's probability of failure alone is generally large enough to render meaningless any calculated differences involving more than one significant digit, such as a calculated difference of 100×10^{-6} compared to 149×10^{-6} in E_c estimates for a commercial launch.[9] Specifically, during SpaceX's third Falcon 9 mission (F9–003), two probability of failure analysis approaches applied by the two major federal ranges for commercial launches, which the FAA deemed equally valid based on the requirements in § 417.224, produced mean probability of failure estimates during Eurasian over-flight that varied by approximately 40 percent. Also, the uncertainty in the E_c estimate scales linearly with the statistical uncertainty associated with any probability of failure analysis method, even when the assumptions of the model are absolutely true. For example, applying the binomial approach in part 417, appendix A, § 417.25(b)(5)(iii), to a new vehicle with a record of no failures in the first two flights produces a reference probability of failure estimate of 0.28. Even if the assumption of Bernoulli trials[10] inherent in the binomial approach is absolutely true, which is doubtful given the evolutionary nature of expendable launch vehicles, particularly during the first several flights, there is about a 20 percent chance that the true probability of failure is at least twice the reference probability of failure estimate. It is impossible to know the true probability of failure for any launch vehicle flight. The FAA believes that the uncertainty in the probability of failure alone always renders meaningless any more than one significant digit in any commercial launch or re-entry E_c estimate.

ACTA provided three alternatives to the FAA's July 2014 proposal. These alternatives included (1) using "the approach specified in RCC 321–10" in which increasing degrees of analysis and mitigation are required as the risk increases above 30×10^{-6} and again at 100×10^{-6}; (2) "[e]xpress[ing] the limit that $\log_{10}(EC)$ is less than -4.0 (to two significant figures"; and (3) "[a]pply[ing] a limit of 9×10^{-5} rather than 1×10^{-4} which results in an effective limit of 95×10^{-6}."

The FAA appreciates the potential value in using the RCC 321–10 approach, in which increasing degrees of analysis and mitigation are required as the risk increases. Such a dramatic change, however, is beyond the scope of this rulemaking. The FAA disagrees with ACTA's recommendations to "[e]xpress the limit that $\log_{10}(EC)$ is less than -4.0 (to two significant figures" or "[a]pply[ing] a limit of 9×10^{-5} rather than 1×10^{-4} which results in an effective limit of 95×10^{-6}" because either of those approaches would still imply more significant digits in the E_c estimate than justified based on the E_c uncertainty analyses summarized above.

3. Establishing an Acceptable Risk Limit of 1×10^{-4}

Under the 2014 NPRM, §§ 417.107(b)(1), 431.35(b)(1)(i), and 435.35(b) would establish an acceptable collective risk limit of 1×10^{-4}. Two commenters, Lockheed Martin and SpaceX, supported the proposal without additional significant comment. SpaceX noted that the proposal would align the FAA's risk limit with the standards set by other organizations within the U.S. Government.

Orbital Sciences supported the proposal but also recommended that the FAA "[e]xamine historical data for all U.S. launches and determine the highest level of collective risk realized by the public [to] propose a more realistic . . . collective risk [number] based on this successful precedent." Similarly, Blue Origin recommended that the collective risk number be revised higher than proposed, to 1×10^{-3}. Blue Origin noted that Federal ranges have, in the past, waived risks associated with non-commercial reentry to as high as 1×10^{-3}, and stated, "[t]he commercial spaceflight industry should be held to the standard that the nation's civil and military programs are held to *in practice.*"[11] Blue Origin suggested that reducing the need for waivers would increase transparency and "more closely reflect FAA's regulatory practice, rather than relying on a waiver process such as practiced by NASA and" the U.S. Air Force. Blue Origin further stated that, if the FAA adopts "a risk level that differs from [the FAA's] actual practice, the commercial spaceflight industry will be left not knowing what the real, actual risk level will be in practice," suggesting that reducing the agency's reliance on waivers would provide an important measure of stability and predictability to the commercial space industry.

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[8] In fact, an uncertainty analysis produces a set of point estimates, each of which is an equally valid result, to quantify the uncertainty in the E_c estimate. ACTA itself developed a tool that computes the uncertainty in the point estimate of E_c by using multiple input data sets within the range of feasibility given the uncertainty associated with the input data, together with a multiple sets of factors applied to each sub-model to account for the estimated biases and uncertainties in the applicable sub-models.

[9] Of course, the probability of failure uncertainty is very large for relatively new vehicles, which are most likely to have risk estimates near the 1×10^{-4} E_c limit. However, even vehicles with extensive flight history, such as the Delta II, have probability of failure estimates that vary by a factor of two or more based on the analysis approaches applied by the two major federal ranges where commercial launches most often occur. For example, the Delta II demonstrated nine failures in 227 launches in advance of the GRAIL mission. Valid probability of failure analysis methods produced mean estimates of probability of failure for the GRAIL launch between less than 2% to more than 4%, depending on whether and how reliability growth was accounted for.

[10] All expendable launch vehicle failure probability analysis methods used by Federal ranges today assume that launches may be treated as Bernoulli trials: That the vehicle has a constant "true probability" of failure for each and every launch, and that the outcome of each launch is statistically independent of all others. A toss of an evenly weighted coin is a classic example of a Bernoulli trial. Of course, launches are not exactly Bernoulli trials because no two launches are precisely the same. For example, the vehicle may be modified or improved as needed during a sequence of launches, particularly if it has failed on previous launches, and there are natural variations due to environmental conditions during the vehicle manufacturing, processing, and launch.

The FAA disagrees with Orbital Sciences' and Blue Origin's recommendations to increase the E_c limit beyond 1×10^{-4}. The United States has achieved a flawless public safety record for orbital launch and re-entry missions in part because of a comprehensive and interdependent set of public safety requirements developed and implemented by numerous, cooperating entities within the U.S. government. Three U.S. government entities, the U.S. Air Force, NASA, and the FAA, have oversight of the safety of launches. Both the U.S. Air Force and NASA, working alone and collaborating through organizations such as the RCC and the Common Standards Working Group, have examined the available data and determined that 100×10^{-6}, also expressed as 1×10^{-4}, is an appropriate standard for acceptable risk.[12] There are an insufficient number of casualty-free launches and reentries with E_c greater than 1×10^{-4} to justify departing from the standard adopted by the U.S. Air Force and NASA. In the few cases where waivers were granted by the FAA, prior to and including 2014, the respective E_c was always less than the risk levels previously approved for government launches. Hence, any precedent for granting waivers for prior non-commercial reentries is not sufficient justification for implementing a more lenient risk limit, especially in light of the increased scrutiny given to each waiver applicant.

Moreover, a fundamental tenent of risk management, both as applied to the regulation and general safety management of various industries, is to set acceptability criteria for collective risk that are below the level that may be acceptable in unusual circumstances or on a short term basis. For aviation risk management, the FAA has identified risk-informed Continued Airworthiness Assessment Methodologies (CAAM) that include short term acceptable risks that are orders of magnitude greater than long term acceptable risk levels.[13] Thus, AC 39–8 is another example of the FAA adopting a risk management approach where basic acceptability criteria are more stringent than may be acceptable in unusual circumstances or on a short term basis. Note that the FAA's use of quantitative risk analysis results is consistent with the risk-informed approach to regulatory decision-making adopted by the Nuclear Regulatory Commission (NRC). In 1999, the NRC wrote that "a 'risk-informed' approach to regulatory decision-making represents a philosophy whereby risk insights are considered together with other factors to establish requirements that better focus licensee and regulatory attention on design and operational issues commensurate with their importance to public health and safety."[14]

In light of these considerations and all currently available data, the FAA finds that a collective E_c limit of 1×10^{-4} reflects an appropriate consensus safety risk standard for launch and re-entry. Consistent with Executive Orders 13563 and 13610, the FAA plans to periodically review and revise this public risk standard, if warranted, based upon factors such as the quantity of launch and reentry activities, demonstrated reliability and safety record and benefits provided, technological capabilities, and maturity of the industry.

ACTA and an individual commenter cautioned against justifying any increase to the acceptable risk standards by reference to either a relatively small number of successful launches or the uncertainty of launch risk calculations. The individual commenter recommended that any increase to the acceptable risk limits be premised on a determination that higher numbers still adequately ensure public safety.

The FAA disagrees with ACTA's and the individual commenter's premise concerning the basis of this final rule. Contrary to their assertion, the FAA is not relying on the historical success of a relatively small number of past launches as a justification for increasing the acceptable risk standard. Rather, the FAA, by statute, is authorized to regulate "only the extent necessary" to protect public health and safety. 51 U.S.C. 50901(a)(7). The U.S. Air Force and NASA, two federal agencies with significant expertise in this area, have both examined the currently available data and concluded that it does not justify an aggregated E_c limit lower than 100×10^{-6}. Furthermore, there are published materials that explain the rationale for the collective risk limit adopted both by the U.S. Air Force and NASA.[15] [16] [17] The currently available data does not justify a regulatory restriction on E_c for commercial licensees that is more stringent than the standards adopted both by the U.S. Air Force and NASA.

D. Clarifying Hazard Areas for Ships and Aircraft

Prior to this final rule, § 417.107(b)(3) and (4) required the launch operator of an ELV to implement and establish ship and aircraft hazard areas providing an equivalent level of safety to that provided by the ship and aircraft hazard areas implemented for launch from a Federal launch range. 71 FR 50508. The FAA proposed to amend § 417.107(b)(3) and (4) to clarify the requirements for hazard areas for ships and aircraft, respectively, by removing references to an "equivalent level of safety to that provided by [ship or aircraft] hazard areas implemented for launch from a Federal range" and replacing them with a numeric limit on the probability of impact with debris capable of causing a casualty.

Orbital Sciences recommended that no change be made to the hazard area regulations. Orbital Sciences stated that the proposal to implement a specific risk standard, even if it is quantitatively the same as the Federal launch ranges' standard, creates the possibility that the Federal launch ranges will change their standard and the FAA's regulation will become obsolete. The FAA disagrees with Orbital Sciences' recommendation. Regardless of whether the Federal launch ranges change their risk criteria for ships and aircraft, the Administrative Procedure Act, with limited exceptions, prohibits the FAA from changing its regulatory requirements without notice and comment. 5 U.S.C. 553. Therefore, even if the FAA maintained these provisions using a purportedly outdated standard, a change to the Federal launch range requirements would not automatically flow through to FAA regulations, and licensed launch operators would have to abide by the Federal launch range standard in effect when the FAA first promulgated the regulation. Accordingly, if the Federal launch ranges change their standard, the FAA will have to initiate its own rulemaking in order to harmonize its water-borne vessel and aircraft hazard areas limits with the Federal launch ranges'. To prevent this confusion, the FAA is revising § 417.107(b)(3) and (4) to identify the numeric requirements.

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[11] Emphasis in original.

[12] See Range Commanders Council Risk Committee of the Range Safety Group, Common Risk Criteria for National Test Ranges, RCC 321–10, White Sands Missile Range, New Mexico, 2010.

[13] Federal Aviation Administration, Advisory Circular No. 39–8, *Continued Airworthiness Assessments of Powerplants and Auxiliary Power Unit Installations of Transport Category Planes,* Washington, DC, September 2003.

[14] U.S. Nuclear Regulatory Commission, *Commission Issuance of White Paper on Risk-informed and Performance-based Regulation,* Yellow Announcement # 019, Washington, DC, dated March 11, 1999.

[15] See Range Commanders Council Risk Committee of the Range Safety Group, Common Risk Criteria for National Test Ranges, RCC 321–10, White Sands Missile Range, New Mexico, 2010.

[16] Wilde P., *Public Risk Criteria and Rationale for Commercial Launch and Reentry,* 5th IAASS Symposium, Versailles, France, October 2011.

[17] Wilde, P. *Public Risk Tolerability Criteria for Space Launch and Reentry,* Presented at the 51st Scientific and Technical Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space, Vienna, Austria, 18 Feb. 2014.

An individual commenter questioned the proposed clarifications regarding the ship and aircraft hazard areas. Specifically, the individual commenter pointed out that the proposal, which is based on the probability of impact with debris capable of causing a casualty, could be either excessively conservative or non-conservative depending on the details of the analysis, such as the threshold characteristics of the debris and the size of the area considered vulnerable to such debris impact. ACTA provided similar comments, stating the regulations (1) do "not define the area for computing impact" with a vessel or aircraft, and (2) do not clarify that operators must account for "the near-field explosive effects of propellants impacting in the vicinity of [a] ship."

The individual commenter's recommendation to substantively amend the hazard area risk standards is outside the scope of this rulemaking. As described in the 2014 NPRM, this final rule does not substantively change the hazard area risk standards. 79 FR 42241, 42249–50. The hazard area revisions only clarify the FAA's standards by using a specific number, rather than an unquantified reference to Federal launch range standards. The FAA therefore rejects the commenter's recommendations to make substantive changes to the rule.

ACTA's comments also included numerous additional observations related to the hazard area regulations. ACTA stated that the regulations do not "specify how (or even if) hazard areas are to be used to implement mitigation" to protect specific individuals or the general public. This observation, however, ignores other sections of the regulations that do address how hazard areas are to be used to implement mitigation techniques, such as issuing public warnings and performing surveillance. To meet the public risk criteria of § 417.111(b), § 417.223 requires "a flight hazard area analysis that identifies any regions of land, sea, or air that must be surveyed, publicized, controlled, or evacuated in order to control the risk to the public from debris impact hazards." Furthermore, § 417.111(j) requires a launch operator to "implement a plan that defines the process for ensuring that any unauthorized persons, ships, trains, aircraft or other vehicles are not within any hazard areas identified by the flight safety analysis or the ground safety analysis," and explicitly includes hazard areas identified under §§ 417.107 and 417.223.

ACTA also criticized the proposal for failing to justify "why the acceptable risk limit to the general public on ships is higher than for people on land." The premise of this comment is not correct. Specifically, § 417.107(b)(2) provides that a launch operator may initiate flight only if the risk to any individual member of the public does not exceed a 1×10^{-6} probability of casualty, regardless of the location of that individual member of the public. Thus, the FAA's risk criteria provide equal protection to each individual member of the public, on ships or on land. Moreover, to the extent ACTA is criticizing the water-borne vessel hazard areas requirement, the FAA is not changing the water-borne vessel hazard area requirement; it is merely clarifying the requirement by removing a reference to where the requirement can be found and replacing it with the actual requirement.

ACTA also was concerned that the criteria for ship and aircraft do not explicitly exclude "mission-support vessels and aircraft," creating an inconsistency with the remainder of the regulation. Although ACTA is correct that the criteria do not apply to vessels and aircraft that support the launch, the FAA's launch and reentry regulations address only *public* safety, which § 401.5 defines as "for a particular licensed launch, the safety of people and property that are not involved in supporting the launch . . ." It, therefore, is unnecessary to explicitly exclude "mission-support vessels and aircraft" from the public safety criteria for launch.

Finally, ACTA recommended that § 417.107(b)(3) and (4) state that "a launch operator must make reasonable effort to ensure that the probability of casualty to members of the public on water borne vessels or in aircraft does not exceed the limit specified in [§ 417.107(b)(2)]." ACTA stated that this revision would establish a "specific risk value" while at the same time giving operators flexibility as to "the method of protection" or risk mitigation. The regulations already allow a launch operator to employ different methods of mitigating risk so the FAA will not adopt ACTA's proposal.

E. Including Toxic Release in the Reentry Risk Analysis

The FAA proposed to include the risks associated with toxic release in the E_c limitations for the reentry of an RLV or other reentry vehicle. Blue Origin opposed the proposal to include toxic release in the reentry risk calculation. Blue Origin, quoting from the regulatory evaluation in the 2014 NPRM, stated that "toxic release risks for reentry vehicles are 'expected to remain a minor factor in E_c calculations,' because most of the propellant will have been used during the mission . . ." The FAA is revising its position, and disagrees with Blue Origin's assertion, because the FAA is aware of plans that involve the return to land with a significant hypergolic, highly toxic, propellant load carried until touchdown. The FAA therefore continues to include toxic release in the reentry risk analysis at this time.

F. Miscellaneous

Sierra Nevada recommended that the FAA define orbital insertion to help "reduce misinterpretation of the regulations" because "[s]etting a specific boundary would allow commercial space companies to clearly understand the boundaries for expected casualty limits."

The FAA agrees with Sierra Nevada's comments that § 417.107(b)(1) can be amended to prevent potential misinterpretation.[18] The FAA takes this opportunity to clarify that risk associated with planned impacts after orbital insertion should not be included in an E_c analysis governed by § 417.107. Accordingly, to minimize confusion, the FAA is removing the phrase "including each planned impact" from § 417.107(b)(1) to state only that the operator account for risk through orbital insertion. The risk assessment conducted under § 417.107(b)(1) must only include impacts through—meaning up to and including—the moment of orbital insertion. More specifically, E_c encompasses risks associated with planned events occurring from launch through the moment of orbital insertion, but not the risks associated with on-orbit activities. For example, the § 417.107 risk analysis must include the planned impact of a first stage jettisoned prior to orbital insertion regardless of whether the actual impact of the first stage occurs before or after orbital insertion.[19] This is true whether the first stage makes a controlled or uncontrolled impact. In contrast, the § 417.107 risk analysis does not require accounting for the planned impact of an upper stage jettisoned after the vehicle has achieved orbital insertion.

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[18] The FAA notes that its 2014 waiver for the Orion Exploration Test Flight 1, which authorized an E_c of up to 218×10^{-6}, improperly accounted for public risks outside the scope of § 417.107(b)(1) by considering public risk associated with planned impacts after orbital insertion in the E_c calculation. *Notice of Waiver,* Mar. 10, 2014 (79 FR 13375); *Notice of Amended Waiver,* Dec. 5, 2014, (79 FR 72240).

An individual commenter observed that the 2014 NPRM proposed to revise the E_c requirements in parts 417, 431, and 435, but neglected to revise the corresponding E_c requirements in part 420, *License to Operate a Launch Site.* This was an oversight. This final rule revises §§ 420.19(a)(1); 420.23(a)(2), (b)(3), and (c)(1)(ii); 420.25(b); 431.43(d)(2); paragraph (d) of Appendix C to part 420; and paragraphs (a)(5), (e)(2), and (e)(3) of Appendix D to part 420 to account for the E_c revisions made throughout chapter III of title 14 of the Code of Federal Regulations.

Previously, § 417.107(b)(2) referenced E_c when describing the risk limit to any individual member of the public. This reference may cause confusion because E_c is a measure of collective risk to public safety, not individual risk. To prevent any potential confusion, this final rule makes a non-substantive change to § 417.107(b)(2) to remove the reference to E_c.

The FAA is streamlining the terminology in the collective risk requirements. Specifically, we are removing the colloquial term "average" from "expected average," which is redundant and unnecessary. In statistics there are three measures of central tendency or "averages": The median, mode, and mean. The expected value is synonymous with the mean value specifically, thus the term "expected" is technically precise and sufficient.

G. Differences Between the 2014 NPRM and the Final Rule

As described above, there are two differences between the FAA's proposal in the 2014 NPRM and this final rule as adopted. These changes include: (1) removing the phrase "including each planned impact" from § 417.107(b)(1) and (2) revising part 420 to account for revisions to the E_c standard in parts 417, 431, and 435.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined that this final rule: (1) Has net benefits that justify the costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or other private sectors by exceeding the threshold identified above.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. Based on the facts and methodology explained for the NPRM, the FAA provided cost-savings estimates for the proposed rule and requested comments. The FAA did not receive any comments on the estimates and thus the FAA follows the same approach herein. These analyses are summarized below.

Parties Potentially Affected by This Rulemaking

- Satellite owners
- License applicants for launches and reentries
- Commercial space transportation suppliers
- The Federal Aviation Administration and the general public

Principal Assumptions and Sources of Information

- *Benefit-Cost Analysis for the collective risk limits during launches and reentries* (GRA study 2013[20] by GRA, Incorporated)
- FAA Office of Commercial Space Transportation forecast of suborbital launches using subject experts' judgments
- All monetary values are expressed in 2014 dollars
- Projected impacts for a 10-year period from 2016 to 2025

Cost-Benefit Analysis

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR parts 417, 431, and 435 by changing the collective risk limits for launches and reentries and clarifying the risk limit used to establish hazard areas for ships and aircraft. The NPRM was published in the **Federal Register** on July 21, 2014 (79 FR 42241).

Prior to this final rule, the FAA prohibited the expected casualty (E_c) for each physically distinct source of risk (impacting inert and explosive debris, toxic release and far field blast overpressure) from exceeding 30×10^{-6} or an expected average number of 0.00003 casualties per launch. The aggregate E_c equals the sum of these risks, *i.e.,* $(30 \times 10^{-6}) + (30 \times 10^{-6}) + (30 \times 10^{-6})$, for a total of 90×10^{-6}. However, launches were not subject only to this single aggregate E_c limit. If there was a reentry using a reentry vehicle, an additional regulatory provision became applicable that prohibited the combined E_c of the launch and reentry from exceeding 30 ×

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[19] For example, the return to Earth and successful landing of the first stage of SpaceX's Falcon 9 launch vehicle was considered part of launch and was accounted for in the calculation of launch risk.

[20] GRA study can be found in the docket.

10^{-6} for vehicle or vehicle debris impact hazards.[21]

Under this final rule, the FAA separates its expected casualties (E_c) for launches and reentries. The final rule adopts an aggregate E_c requirement for a launch not to exceed 1×10^{-4} posed by the following hazards: (1) Impacting inert and explosive debris, (2) toxic release, and (3) far field blast overpressure. The FAA also finalizes a separate aggregate E_c requirement for a reentry not to exceed 1×10^{-4} posed by the hazards of debris and toxic release.

An E_c value of $1 \times\times 10^{-4}$ mathematically equals 100×10^{-6}, which is the E_c value currently used on federal ranges for civil and military launch and reentry missions. However, because the aggregate E_c limit uses only one significant digit in the format of 1×10^{-4}, this final rule, in practice, allows a commercial launch or reentry with an aggregate E_c limit up to 149×10^{-6} to proceed without requiring the applicant to seek an FAA waiver.

Based on analysis of the historical data, the FAA found the criteria are supported by the commercial mission experiences and post-mission safety data available since 1989. The FAA's launch data indicate during this time there were 45 suborbital launches and 193 orbital launches, for a total of 238 launches.[22] At least four of these launches used an E_c that was allowed to go above the existing 30×10^{-6} E_c limits. None of those four launches resulted in any casualties or other adverse impacts on the public safety.

As discussed in the preamble above, the FAA believes managing the precision of rounding digits below and above the E_c limit (*i.e.*, 1×10^{-4}) is unrealistic and unnecessary for administering launch or reentry licenses. By using only one significant digit, the E_c limit for launches become less restrictive than the three existing launch E_c limits combined (*i.e.*, 90×10^{-6}). The regulatory-compliance difference between 90×10^{-6} and 149×10^{-6} falls under the accepted FAA commercial launch safety margin because the level of imprecision associated with E_c calculations means that there is no substantive difference between these two E_c figures. However, changing the regulations to use only one significant digit will improve efficiency to license applicants in the launch approval process. In addition, using a single E_c limit that applies to an aggregate risk in place of three separate hazard-specific E_c limitations will further increase efficiency. As a result, the FAA believes the final rule maintains a level of safety for commercial launches commensurate with the current level of safety associated with civil and military counterparts, but will be cost-relieving by eliminating some waiver processes necessary prior to this rule.

The criteria also separately address the public risk limits of toxic release and inert and explosive debris risks for reentry operations by establishing public safety requirements similar to current practice. Based on past practices of administering reentry licenses, the FAA found it was unrealistic and unnecessary to administer reentry licenses with a strict E_c limit of 30×10^{-6} for the combination of launch and reentry debris hazards. Aggregating E_c limits of toxic release and inert and explosive debris risks, the E_c limit for reentry will be commensurate with the safety requirements applied to civil and military reentries, and more conservative than past federal ranges' practices that gave waivers to allow non-commercial reentry missions to proceed with E_c risks on the order of 1×10^{-3}.

The final rule revises reentry E_c limits for toxic release and inert and explosive debris risks to be close to the current FAA reentry licensing practice, on which we assess the current economic baseline of the revised E_c limits. The FAA expects that the nominal increase in the debris E_c limit on reentry in this rule will impose no or minimal societal costs. This is because the FAA has historically issued a number of waivers to commercial launches that allowed those launches to exceed the regulatory Ec limits as long as those launches did not exceed the 100×10^{-6} E_c limits imposed by the federal ranges. The FAA has issued waivers to commercial reentries that allowed the E_c for those reentries to be considered separately from the E_c for launch. While the FAA, as part of its waiver process, has not yet had to consider whether a reentry operation should be issued a waiver to exceed the 30×10^{-6} E_c limit on reentry, the FAA expects that its launch waiver analysis will apply equally to future reentry operations. Consequently, the FAA anticipates that many of the future reentry operations would be eligible for an FAA waiver in the absence of this rule. Therefore, this rule will eliminate extra expenses of processing such waivers.

The FAA finalizes the NPRM's proposal to include the risks associated with toxic release in the E_c limitations for the reentry of a reentry vehicle. By including toxic release risks during a reentry operation, the final rule provides an incremental margin of safety to the public that did not exist prior to this final rule.

The propellant load for a reentry vehicle using parachutes to land is generally minimal because most of the propellant will have been used before landing. The E_c risk for reentry vehicles landing in the ocean will likely be below the collective E_c limit. Toxic release risks for reentry will remain a minor factor in E_c calculations until a licensee plans to land a reentry vehicle on the ground, under power, using highly toxic hypergolic propellants carried all the way to touchdown. Currently, toxic release risk during launch generally exceeds an E_c of 1×10^{-4} when a reentry vehicle with hypergolic propellants on board has to separate from its launch vehicle during an abort-to-orbit, forcing an unplanned landing on land. Hence, a reentry vehicle planning to land on the ground in such an abort-to-orbit scenario will not get a government launch license under current U.S. Air Force regulations. The FAA has not received applications for reentry vehicles that are capable of landing on land without substantial risks of releasing hypergolic propellants, although the FAA learned through conversations with the U.S. Air Force that the industry is in the early planning stage of developing this type of vehicle. However, if a reentry risk analysis found the reentry vehicle imposed a substantial toxic release risk to a launch site or outside of the hazard area, the reentry operator is required under proposed regulation to choose an alternative landing site to ensure any potential toxic release does not exceed the collective E_c of 1×10^{-4}. Because operators were required to do a reentry risk analysis prior to this final rule, there will be no additional compliance costs resulting from this final rule. The necessary reentry risk analysis required for toxics only by this final rule can be done within 3 weeks of time by 1.5 analysts being paid at $35 per hour for the total of $6,300 per study. The FAA considers this analysis cost to be minimal.

The changes in the risk limits apply to all three hazards combined rather than to each individual hazard. This final rule permits launch or reentry operations without requiring operators to seek FAA waivers as long as the aggregated risks will not exceed 0.0001 expected casualties per launch or reentry mission (*i.e.,* 1×10^{-4}). Both the commercial space transportation industry and the government will receive savings attributable to less paperwork by avoiding some waiver-application process expenses.

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[21] This limit is specified in 14 CFR 431.35, which applies only to reusable launch vehicles. However, 14 CFR 435.35 incorporates and applies 14 CFR 431.35 to all reentry vehicles.

[22] AST/FAA launch data as of Feb 1, 2013, excluding 21 failed launches. This data can be found at *http://www.faa.gov/about/office_org/headquarters_offices/ast/launch_license.* See also Appendix A in GRA study, which can be found on the docket for this rule.

Based on historical records of requests and FAA-issued waivers from the previous E_c limits, the FAA estimates that launch operators would seek additional 38 waivers from 2016 to 2025 in the absence of this rule.[23] After the promulgation of this final rule, the FAA expects these 38 waivers will not be needed. Thus, this final rule will result in savings for both the industry and the FAA, as the industry does not have to expend resources to request waivers and the FAA will not have to expend resources to evaluate waiver requests.

The methodology of this final regulatory impact analysis (RIA) mirrors the RIA associated with the NPRM. The cost of a formal waiver request to industry ranges from $137,097 for 1,717 hours to $195,094 for 2,443 hours of aerospace engineering time to prepare and submit the necessary documentation to the FAA for approval.[24] Multiplying the forecasted 38 waivers for the 10-year period by the lower and upper bound costs yields cost savings ranging from $5.2 million to $7.4 million. The estimates for the FAA's cost savings are based on the costs of FAA personnel time ranging from $81,231 for 1,040 hours to $243,693 for 3,120 hours[25] to process each waiver request. This range is related to the characteristics of the individual launch or reentry request. Multiplied by the forecasted 38 waivers granted, the total estimated savings of FAA personnel time to review requests and issue waivers range from $3.1 million to $9.3 million. The resulting savings for both the industry and the FAA with an estimated mid-point will be approximately $12.5 million ($8.8 million present value at a 7% discount rate). The lower and the higher estimates are approximately $8.3 million and $16.7 million ($5.8 million and $11.7 million present value at a 7% discount rate), respectively.

The final rule may also result in cost-saving by reducing launch delays and mission scrubs. The FAA currently does not have sufficient data to quantify these savings, but believes the possible reduction of launch delays and mission scrubs may increase the overall capacity of the U.S. space transportation industry. Accordingly, the FAA sought comments on cost-savings in the NPRM and did not receive comments on the estimated benefits of reduced launch delays and mission scrubs. Therefore, the FAA maintains the same benefit determination.

In summary, the final rule maintains safety levels for commercial space transportation commensurate with the current requirements applied to launches and reentries. In addition, the final rule will result in net benefits for both industry and government. The net benefit will be achieved by avoiding costs pertaining to applying and granting waivers with E_c limits between 90×10^{-6} and 149×10^{-6}. Further, related industries may also benefit by averting unnecessary mission delays and scrubs.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required.

The FAA expects many small entities will benefit from this final rule because the regulatory revisions to the collective E_c limits are cost-relieving. The FAA solicited comments in the NPRM and did not receive comments with regard to this certification. Therefore, the FAA Administrator certifies that this rule does not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA assesses the potential effect of this final rule and thus determines that the rule does not impose obstacles to foreign commerce, as foreign exporters do not have to change their current export products to the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a final rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation

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[23] GRA Study 2013, Table 5–7.

[24] Basis is provided in GRA Study 2013, Appendix C, Table C–3.

[25] GRA Study 2013, Appendix C, Tables C–1 and C–2 for the basis of this value.

Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Publishing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 417

Launch and reentry safety, Aviation safety, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

14 CFR Part 420

Environmental protection, Launch safety, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Parts 431 and 435

Launch and reentry safety, Aviation safety, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter III of title 14, Code of Federal Regulations as follows:

PART 417—LAUNCH SAFETY

■ 1. The authority citation for part 417 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 2. In § 417.107, revise paragraphs (b)(1) through (4) to read as follows:

§ 417.107 Flight safety.

* * * * *

(b) * * *

(1) A launch operator may initiate the flight of a launch vehicle only if the total risk associated with the launch to all members of the public, excluding persons in water-borne vessels and aircraft, does not exceed an expected number of 1×10^{-4} casualties. The total risk consists of risk posed by impacting inert and explosive debris, toxic release, and far field blast overpressure. The FAA will determine whether to approve public risk due to any other hazard associated with the proposed flight of a launch vehicle on a case-by-case basis. The E_c criterion applies to each launch from lift-off through orbital insertion for an orbital launch, and through final impact for a suborbital launch.

(2) A launch operator may initiate flight only if the risk to any individual member of the public does not exceed a casualty expectation of 1×10^{-6} per launch for each hazard.

(3) A launch operator must establish any water borne vessel hazard areas necessary to ensure the probability of impact (P_i) with debris capable of causing a casualty for water borne vessels does not exceed 1×10^{-5}.

(4) A launch operator must establish any aircraft hazard areas necessary to ensure the probability of impact (P_i) with debris capable of causing a casualty for aircraft does not exceed 1×10^{-6}.

* * * * *

PART 420—LICENSE TO OPERATE A LAUNCH SITE

■ 3. The authority citation for part 420 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 4. In § 420.19, revise paragraph (a)(1) to read as follows:

§ 420.19 Launch site location review—general.

(a) * * *

(1) A safe launch must possess a risk level estimated, in accordance with the requirements of this part, not to exceed an expected number of 1×10^{-4} casualties (E_c) to the collective members of the public exposed to hazards from the flight.

* * * * *

■ 5. In § 420.23, revise paragraphs (a)(2), (b)(3), and (c)(1)(ii) to read as follows:

§ 420.23 Launch site location review—flight corridor.

(a) * * *

(2) Includes an overflight exclusion zone where the public risk criteria of 1×10^{-4} would be exceeded if one person were present in the open; and

* * * * *

(b) * * *

(3) Includes an overflight exclusion zone where the public risk criteria of 1×10^{-4} would be exceeded if one person were present in the open; and

* * * * *

(c) * * *

(1) * * *

(ii) An overflight exclusion zone where the public risk criteria of $1 \times$

10^{-4} would be exceeded if one person were present in the open.

* * * * *

■ 6. In § 420.25, revise paragraph (b) to read as follows:

§ 420.25 Launch site location review—risk analysis.

* * * * *

(b) For licensed launches, the FAA will not approve the location of the proposed launch point if the estimated expected casualty exceeds 1×10^{-4}.

■ 7. In Appendix C to part 420, revise paragraphs (a)(2) and (d)(1) and (2) to read as follows:

Appendix C to Part 420—Risk Analysis

(a) * * *

(2) An applicant shall perform a risk analysis when a populated area is located within a flight corridor defined by either appendix A or appendix B. If the estimated expected casualty exceeds 1×10^{-4}, an applicant may either modify its proposal, or if the flight corridor used was generated by the appendix A method, use the appendix B method to narrow the flight corridor and then redo the overflight risk analysis pursuant to this appendix. If the estimated expected casualty still exceeds 1×10^{-4}, the FAA will not approve the location of the proposed launch point.

* * * * *

(d) * * *

(1) If the estimated expected casualty does not exceed 1×10^{-4}, the FAA will approve the launch site location.

(2) If the estimated expected casualty exceeds 1×10^{-4}, then an applicant may either modify its proposal, or, if the flight corridor used was generated by the appendix A method, use the appendix B method to narrow the flight corridor and then perform another appendix C risk analysis.

■ 8. In Appendix D to part 420, revise paragraphs (a)(5) and (e)(2) and (3) to read as follows:

Appendix D to Part 420—Impact Dispersion Areas and Casualty Expectancy Estimate for an Unguided Suborbital Launch Vehicle

(a) * * *

(5) If the estimated E_c is less than or equal to 1×10^{-4}, the FAA will approve the launch point for unguided suborbital launch vehicles. If the estimated E_c exceeds 1×10^{-4}, the proposed launch point will fail the launch site location review.

* * * * *

(e) * * *

(2) If the estimated expected casualty does not exceed 1×10^{-4}, the FAA will approve the launch point.

(3) If the estimated expected casualty exceeds 1×10^{-4}, then an applicant may modify its proposal and then repeat the impact risk analysis in accordance with this appendix D. If no set of impact dispersion areas exist which satisfy the FAA's risk threshold, the applicant's proposed launch site will fail the launch site location review.

PART 431—LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE (RLV)

■ 9. The authority citation for part 431 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 10. In § 431.35, revise paragraph (b)(1) to read as follows:

§ 431.35 Acceptable reusable launch vehicle risk.

* * * * *

(b) * * *

(1) To obtain safety approval, an applicant must demonstrate the following for public risk:

(i) The risk to the collective members of the public from the proposed launch meets the public risk criteria of § 417.107(b)(1) of this chapter;

(ii) The risk level to the collective members of the public, excluding persons in water-borne vessels and aircraft, from each proposed reentry does not exceed an expected number of 1×10^{-4} casualties from impacting inert and explosive debris and toxic release associated with the reentry; and

(iii) The risk level to an individual does not exceed 1×10^{-6} probability of casualty per mission.

* * * * *

■ 11. In § 431.43, revise paragraph (d)(2) to read as follows:

* * * * *

(d) * * *

(2) The expected number of casualties to members of the public does not exceed 1×10^{-4} given a probability of vehicle failure equal to 1 (pf=1) at any time the IIP is over a populated area;

* * * * *

PART 435— REENTRY OF A REENTRY VEHICLE OTHER THAN A REUSABLE LAUNCH VEHICLE (RLV)

■ 12. The authority citation for part 435 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 13. Revise § 435.35 to read as follows:

§ 435.35 Acceptable reusable launch vehicle risk.

To obtain safety approval for reentry, an applicant must demonstrate the following for public risk:

(a) The risk to the collective members of the public from the proposed launch meets the public risk criteria of § 417.107(b)(1) of this chapter;

(b) The risk level to the collective members of the public, excluding persons in water-borne vessels and aircraft, from each proposed reentry does not exceed an expected number of 1×10^{-4} casualties from impacting inert and explosive debris and toxic release associated with the reentry; and

(c) The risk level to an individual does not exceed 1×10^{-6} probability of casualty per mission.

Issued under authority provided by 49 U.S.C. 106(f), and 51 U.S.C. 50903, 50905 in Washington, DC, on July 11, 2016.

Michael P. Huerta,

Administrator.

[FR Doc. 2016–17083 Filed 7–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0650]

RIN 1625–AA00

Safety Zone; Houma Navigation Canal Miles 23 to 23.5, Dulac, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters surface to bottom, of the Houma Navigation Canal from mile marker 23 to 23.5. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by replacement work of the Falgout Canal Pontoon Bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City or a designated representative.

DATES: This rule is effective without actual notice from 7:00 a.m. until 7:00 p.m. daily from July 20, 2016 through July 27, 2016. For the purposes of enforcement, actual notice will be used from 7:00 a.m. until 7:00 p.m. daily from July 7, 2016 through July 20, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0650 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact MSTC Justin Helton, Marine Safety Unit Houma, U.S. Coast Guard; telephone 985–850–6457, email *Justin.K.Helton@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
MM	Mile Marker

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the bridge repairs until June 21, 2016. Completing the NPRM process would delay the immediate action needed to protect the public from hazards associated with the Falgout Canal Pontoon Bridge replacement. It is impracticable to publish an NPRM because we must establish this safety zone by July 7, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice for this occurrence would unnecessarily delay the effective date and would be impracticable based on the limited time frame, as well as be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with the replacement of the Falgout Canal Pontoon Bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Morgan City (COTP) has determined that potential hazards associated with the Falgout Canal Pontoon Bridge replacement between 7:00 a.m. and 7:00 p.m. from July 7 through July 27, 2016 will be a safety concern for anyone within the area extending from MM 23 to 23.5 of the Houma Navigation Canal. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the Falgout Canal Pontoon Bridge is being replaced.

IV. Discussion of the Rule

This rule establishes a safety zone from 7:00 a.m. until 7:00 p.m. from July 7 through July 27, 2016. The safety zone will cover all navigable waters, surface to bottom, of the Houma Navigation Canal from MM 23 to 23.5. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the Falgout Canal Pontoon Bridge is being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This regulatory action determination is based on the size, location, duration, and specific times of enforcement for the temporary safety zone. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the Falgout Canal Pontoon Bridge is being replaced. This temporary safety zone will be enforced during specific times during daylight hours for bridge replacement operations only, and limits access to a small area on the waterway covering one-half mile. Vessels will be able to request passage through area from the COTP. Additionally, there will be a break in operation allowing any build up of traffic to pass on a once daily basis.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone, during daylight hours, lasting less than 13 hours per day for 21 days that will prohibit entry into or transit within MM 23 to 23.5 of the Houma Navigation Canal. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0650 to read as follows:

§ 165.T08–0650 Safety zone; Houma Navigation Canal between mile 23 to 23.5, Dulac, LA.

(a) *Location.* The following area is a temporary safety zone: All waters of the Houma Navigation Canal, surface to bottom, between mile 23 and mile 23.5, Dulac, LA.

(b) *Enforcement period.* This safety zone will be enforced from 7:00 a.m. until 7:00 p.m. daily from July 7 through July 27, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City (COTP) or designated personnel. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 13 and 16 or phone at 504–343–7928.

(2) Persons and vessels permitted to deviate from this safety zone regulation and enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: July 1, 2016.

B.E. Welborn,

Captain, U.S. Coast Guard, Captain of the Port Morgan City.

[FR Doc. 2016–17035 Filed 7–19–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0854; FRL–9949–00–Region 10]

Air Plan Approval; Oregon; Medford Area Carbon Monoxide Second 10-Year Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a second 10-year carbon monoxide (CO) limited maintenance plan (LMP) for the Medford area in Oregon, submitted by the Oregon Department of Environmental Quality (tODEQ) on December 11, 2015, along with a supplementary submittal on December 30, 2015, as a revision to its State Implementation Plan (SIP). In accordance with the requirements of the Clean Air Act (CAA), the EPA is approving this SIP revision because it demonstrates that the Medford area will continue to meet the CO National Ambient Air Quality Standards (NAAQS) for a second 10-year period beyond redesignation, through 2025.

DATES: This rule is effective on September 19, 2016, without further notice, unless the EPA receives adverse comment by August 19, 2016. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2015–0854 at *http://www.regulations.gov,* or via email to *Chi.John@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: John Chi, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, 1200 6th Avenue, Seattle, WA 98101; telephone number: 206–553–1185; email address: *Chi.John@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, it is intended to refer to the EPA.

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I. This Action

The EPA is approving the carbon monoxide limited maintenance plan (CO LMP) submitted by the ODEQ, on December 11, 2015, along with a supplementary submittal on December 30, 2015, (the submittal) for the Medford area. A LMP is a means of meeting Clean Air Act (CAA) requirements for formerly designated nonattainment areas that meet certain qualification criteria. This CO LMP is designed to keep the Medford area in attainment with the CO standard for a second 10-year period beyond redesignation, through 2025.

II. Background

Under section 107(d)(1)(c) of the CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as Medford, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the CAA, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as Medford, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81 on November 6, 1991 (56 FR 56695).

On July 24, 2002, the EPA approved the ODEQ's request to redesignate the Medford area to attainment of the CO standard (67 FR 48388). In that action, the EPA also approved the maintenance plan required under CAA section 175A(a) to provide for 10 years of maintenance of the CO standard in the Medford area through the year 2015 (67 FR 48388).

As required by the CAA section 175A(b), the SIP submittal provides a second 10-year plan for maintaining the CO standard in the Medford area until 2025. For the second 10-year maintenance plan, the ODEQ chose the option as described in an EPA October 6, 1995 memorandum from Joseph Paisie, the Group Leader of the Integrated Policy and Strategies Group, titled, "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" (LMP Option). To qualify for the LMP Option, the CO design value for an area, based on the eight consecutive quarters (two years of data) used to demonstrate attainment, must be at or below 7.65 ppm (85 percent of the CO NAAQS). In addition, the control measures from the first CO maintenance plan must remain in place.

The EPA has determined that the LMP Option for CO is also available to all states as part of the CAA 175A(b) update to the maintenance plans, regardless of the original nonattainment classification, or lack thereof. Thus, the EPA finds that although the Medford area was designated as a moderate nonattainment area for the CO NAAQS, redesignation to attainment status in conjunction with meeting all requirements of the October 6, 1995, memorandum, allows the ODEQ to be eligible to submit a LMP as the update to its original maintenance plan per section 175A(b) of the CAA.

III. Evaluation of Oregon's Submittal

The requirements of the LMP Option and the EPA's evaluation of how each requirement has been met by the ODEQ's submittal is summarized below.

A. Base Year Emission Inventory

The LMP must contain an attainment year emissions inventory to identify a level of CO emissions in the area that is sufficiently low enough to attain the CO NAAQS. The submittal contains a summary of the CO emissions inventory for the Medford area for the base year 2008. The emission inventory lists CO emissions by general source category—stationary point sources, stationary area sources, on-road mobile sources and non-road mobile sources. On-road mobile sources emissions for the 2008 base year inventory were estimated with the EPA's Motor Vehicle Emissions Simulator (MOVES) 2010b.[1] The methods used to determine the Medford area CO emission inventory are consistent with the EPA's most recent guidance on developing emission inventories.

Historically, exceedances of the CO standard in the Medford area have occurred during the winter months, when cooler temperatures contribute to incomplete combustion, and when CO emissions are trapped near the ground by atmospheric inversions. Sources of carbon monoxide include industry, motor vehicles, non-road mobile sources, (*e.g.*, construction equipment, recreational vehicles, lawn and garden equipment, and area sources (*e.g.*, outdoor burning, woodstoves, fireplaces, and wildfires). The three consecutive months—December through February define the typical CO season. As such, season day emissions in addition to annual emissions are included in the inventory. The unit of measure for annual emissions is in tons per year (tpy), while the unit of measure for season day emissions is in pounds per day (lb/day). The county-wide emissions inventory data is spatially allocated to the Medford urban growth boundary (UGB), and to buffers around the UGB, depending on emissions category.

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[1] MOVES2010b was the most current model available at the time that ODEQ was performing its analysis. The EPA released MOVES2014 on October 7, 2014 (79 FR 60343).

2008 EMISSIONS INVENTORY, MAIN SOURCE CATEGORY SUBTOTALS

Main source category	Annual emissions tons per year	CO emissions pounds per winter day
Stationary Point Sources	2.367.1	13,159
On-road Mobile Sources	5,730.0	28,731
Non-road Mobile Sources	4,488.2	10,061
Stationary Area Sources	3,333.1	30,399
Total	15,927.4	82,350

B. Demonstration of Maintenance

The CO NAAQS is attained when the annual second highest 8-hour average CO concentration for an area does not exceed a concentration of 9.0 ppm. The last monitored violation of the CO NAAQS in the Medford area occurred in 1991, and CO levels have been steadily in decline. The second highest 8-hour CO concentration in 2009 was 2.4 ppm, which is in attainment with the CO NAAQS.

For areas that meet the criteria to use the LMP Option, the maintenance plan demonstration requirement is considered to be satisfied. The EPA believes that if the area begins the maintenance period at, or below, 85 percent of the level of the CO 8-hour NAAQS (at or below 7.65 ppm), the applicability of prevention of significant deterioration requirements, the control measures already in the SIP, and Federal control measures already in place will provide adequate assurance of maintenance over the maintenance period. Thus, there is no requirement to project emissions of air quality over the upcoming maintenance period. The second highest 8-hour CO concentration for Medford based on the two most recent years of data (2008–2009) is 2.4 ppm, which is significantly below the LMP Option requirement of 7.65 ppm.[2] Therefore, the EPA finds that the ODEQ has demonstrated that the Medford area qualifies for the LMP Option and has satisfied the maintenance demonstration requirement.

C. Control Measures

The submittal retains the control measures from the first CO maintenance plan (67 FR 48388). The primary control measure has been the emission standards for new motor vehicles under the Federal Motor Vehicle Control Program. Other control measures have been the Major New Source Review Program with Best Available Control Technology (BACT), Motor Vehicle Inspection Program, and a woodsmoke curtailment program. As stated above, the EPA believes that the Medford area will continue to maintain the standard with the continued implementation of these control measures along with meeting the other requirements to qualify for the LMP option.

D. Monitoring Network and Verification of Continued Attainment

Monitored CO levels in the Medford area have declined progressively since 1991. CO levels have declined significantly across the nation through motor vehicle emissions controls and fleet turnover to newer, cleaner vehicle models. Once CO levels declined and continued to stay well below the NAAQS, the ODEQ requested to remove the Medford CO monitor in 2009 and the EPA approved the request on October 14, 2010. The ODEQ now has been using an alternate method of verifying continued attainment with the CO standard based on the regional emissions analysis conducted by the Rogue Valley Metropolitan Planning Organization and by using the Portland CO monitor to track trends in general CO levels. Both the ODEQ report and the EPA network approval letter are included in the materials of this docket.

Under the Medford CO LMP, the ODEQ will verify continued attainment of the CO NAAQS by conducting a review of CO emissions inventory data for the Medford area. The ODEQ will calculate CO emissions every three years as part of the Statewide Emissions Inventory, which is submitted to the EPA for inclusion in the National Emissions Inventory (NEI). The ODEQ commits to review the NEI estimates to identify any increases over the 2008 emission levels (see the base year emissions inventory in this section) and report on them in the annual monitoring network plan for the applicable year. Because on-road mobile sources and stationary area sources are the predominant sources of CO in Medford, these source categories will be the primary focus of the ODEQ's review. The ODEQ will evaluate any increase in CO emissions to confirm it is not due to a change in emission calculation methodology, an exceptional event, or other factor not representative of an actual emissions increase.

E. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions necessary to ensure prompt correction of any violations of the standard that may occur. The ODEQ has submitted a revised contingency plan that has three phase of action. The initial contingency plan trigger is a "significant increase" in the emissions inventory, which is defined as ten percent above the 2008 emissions inventory levels. The three phases of actions are as follows:

Phase 1. If the three-year review of CO emissions shows a significant increase in emissions, the ODEQ will reestablish ambient CO monitoring in Medford.

Phase 2. If the monitoring data indicates that the LMP eligibility level of 7.65 ppm (85 percent of the 8-hr standard) is exceeded, the ODEQ will evaluate the cause of the CO increase, and investigate corrective strategies.

Phase 3. If a validated violation of the CO standard occurs, in addition to Phase 2 above, the ODEQ will replace the BACT requirement for new and expanding industry with Lowest Achievable Emission Rate (LAER); reinstate CO emissions offset requirements for new and expanding industry; and consider other CO emission reduction measures.

F. Transportation and General Conformity

Federal transportation conformity rules (40 CFR parts 51 and 93) and general conformity rules (58 FR 63214) continue to apply under a LMP. However, as noted in the LMP Option memo, these requirements are greatly simplified. An area under a LMP can demonstrate conformity without submitting an emissions budget, and as a result, emissions do not need to be capped nor does a regional emissions analysis (including modeling) need to be conducted.

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[2] The years 2008–2009 are the most recent two years for available monitoring data because monitoring was discontinued after 2009. The ODEQ has developed an alternate method to verify continued attainment of the CO NAAQS, discussed in the next section.

On April 28, 2016, the EPA found the Medford CO LMP to be adequate for transportation conformity purposes (81 FR 25394). Although regional emissions are no longer required as part of the transportation conformity determinations for CO for the Medford area, other transportation conformity requirements continue to apply to the area, such as consultation, transportation control measures, and project level conformity requirements. The Medford area will continue to be exempt from performing a regional emission analysis, but must meet project-level conformity analyses as well as transportation conformity areas.

IV. Final Action

In accordance with the requirements of the CAA, the EPA is approving the Medford CO LMP submitted by the ODEQ on December 11, 2015, and supplemented on December 30, 2015. The ODEQ has adequately demonstrated that the Medford area qualifies for the LMP option and will maintain the CO NAAQS through the second 10-year maintenance period through 2025.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of the **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 30, 2016.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

■ 2. Amend § 52.1970, paragraph (e), table titled "State of Oregon Air Quality Control Program" by revising "Section 4" to read as follows:

§ 52.1970 Identification of plan.

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(e) * * *

STATE OF OREGON AIR QUALITY CONTROL PROGRAM

SIP citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	* *	*	* *
Section 4	Control Strategies for Non-attainment Areas.	4.1, 12/19/1980	4.1, 4/12/1982, 47 FR 15587	4.1 Portland-Vancouver TSP Attainment Plan.
		4.2, 7/16/1982	4.2, 10/7/1982, 47 FR 44261	4.2 Portland-Vancouver CO Attainment Plan.
		4.3, 7/16/1982	4.3, 10/7/1982, 47 FR 44261	4.3 Portland-Vancouver Ozone Attainment Plan.
		4.4, 6/20/1979	4.4, 6/24/1980, 45 FR 42265	4.4 Salem CO Attainment Plan.
		4.5, 9/19/1980	4.5, 4/12/1982, 47 FR 15587	4.5 Salem Ozone Attainment Plan.
		4.6, 1/30/1981	4.6, 4/12/1982, 47 FR 15587	4.6 Eugene-Springfield TSP Attainment Plan.
		4.7, 6/20/1979	4.7, 6/24/1980, 45 FR 42265	4.7 Eugene-Springfield CO Attainment Plan.
		4.7, 12/9/1988	4.7, 12/6/1993, 58 FR 64161	4.7 Eugene-Springfield CO Maintenance Plan.
		4.8, 1/25/85	4.8, 6/4/1986, 51 FR 20285	4.8 Medford-Ashland Ozone, Maintenance Plan.
		4.9, 10/15/1982	4.9, 2/13/1987, 52 FR 4620	4.9 Medford-Ashland CO Attainment Plan.
		4.10, 4/1983	4.10, 8/15/1984, 49 FR 32574	4.10 Medford-Ashland TSP, Attainment Plan.
		4.11, 10/24/1986	4.11, 1/15/1988, 53 FR 1020	4.11 Grants Pass CO, Attainment Plan.
		4.12, 8/18/1995	4.12, 4/14/1997, 62 FR 18047	4.12 Klamath Falls PM–10 Attainment Plan.
		4.13, 11/13/1991	4.13, 12/17/1993, 58 FR 65934.	4.13 Grants Pass PM–10 Attainment Plan.
		4.14, 9/9/2005	4.14, 6/19/2006, 71 FR 35163	4.14 Medford PM–10 Attainment and Maintenance Plan.
		4.15, 11/8/1991	4.15, 2/15/1995, 60 FR 8563	4.15 La Grande PM–10 Attainment Plan.
		4.16, 1/31/1991	4.16, 8/24/1994, 59 FR 43483	4.16 Eugene-Springfield PM–10 Attainment Plan.
		4.17, 11/20/2000, (submittal date).	4.17, 9/20/2001, 66 FR 48340	4.17 Klamath Falls CO Maintenance Plan.
		4.18, 11/4/1996	4.18, 3/15/1999, 64 FR 12751	4.18 Oakridge PM–10 Attainment Plan.
		4.19, 6/1/1995, (submittal date).	4.19, 9/21/1999, 64 FR 51051	4.19 Lakeview PM–10 Attainment Plan.
		4.50, 8/14/1996	4.50, 5/19/1997, 62 FR 27204	4.50 Portland/Vancouver Ozone Maintenance Plan.
		4.50, 4/12/2007	4.50, 12/19/2011, 76 FR 78571.	4.50 Portland-Vancouver AQMA (Oregon portion) & Salem Kaizer Area 8-hour Ozone (110(a)(1) Maintenance Plan.
		4.51, 7/12/1996	4.51, 9/2/1997, 62 FR 46208	4.51 Portland CO Maintenance Plan.
		4.52, 3/9/2001	4.52, 7/24/2002, 67 FR 48388	4.52 Medford CO Maintenance Plan.
		4.53, 9/10/1999	4.53, 8/31/2000, 65 FR 52932	4.53 Grants Pass CO Maintenance Plan.
		4.55, 10/4/2002	4.55, 10/27/2003, 68 FR 61111.	4.55 Grants Pass PM–10 Maintenance Plan.
		4.56, 10/4/2002	4.56, 10/21/2003, 68 FR 60036.	4.56 Klamath Falls PM–10 Maintenance Plan.
		4.57, 6/28/2007	4.57, 12/30/2008, 73 FR 79655.	4.57 Salem-Keizer Area CO, Limited Maintenance Plan.
		4.58, 12/15/2004	4.58, 1/24/2006, 71 FR 3768	4.58 Portland Area CO Maintenance Plan 2nd 10-year.
		4.58, 12/11/2013	4.58, 5/22/2014, 79 FR 29360	4.58 Portland Area CO Maintenance Plan 2nd 10-year; TCM substitution update 4.58.3.2.2.
		4.59, 9/9/2005	4.59, 6/19/2006, 71 FR 35161	4.59 La Grande PM_{10} Maintenance Plan.

STATE OF OREGON AIR QUALITY CONTROL PROGRAM—Continued

SIP citation	Title/subject	State effective date	EPA approval date	Explanation
		4.60, 9/9/2005	4.60, 6/19/2006, 71 FR 35159	4.60 Lakeview PM_{10} Maintenance Plan.
		4.61, 9/26/2011	4.61, 4/11/2013, 78 FR 21547	4.61 Eugene-Springfield PM_{10} Limited Maintenance Plan.
		4.62, 12/12/2012	4.62, 6/6/2016, 81 FR 36178	4.62, Klamath Falls $PM_{2.5}$ Attainment Plan.
		4.63, 4/16/2015	4.63, 7/28/2015, 80 FR 44867	4.63 Grants Pass Second 10-Year Carbon Monoxide Limited Maintenance Plan.
		4.64, 4/16/2015	4.64, 7/30/2015 80 FR 45435	4.64 Grants Pass Second 10-Year PM_{10} Limited Maintenance Plan.
		4.65, 12/11/2015	4.65 7/20/2016 [Insert **Federal Register** citation].	4.65 Medford Second 10-Year Carbon Monoxide Limited Maintenance Plan.
*	*	*	*	*

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[FR Doc. 2016–17060 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0708; FRL 9949–13–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Kansas; 2015 Kansas State Implementation Plan for the 2008 Lead Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Kansas. This final action will approve Kansas' SIP for the lead National Ambient Air Quality Standard (NAAQS) nonattainment area of Salina, Saline County, Kansas, received by EPA on February 25, 2015. EPA proposed approval of this plan on February 29, 2016. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the Clean Air Act (CAA) identified in EPA's Final Rule published in the **Federal Register** on October 15, 2008, and will bring the designated portions of Salina, Kansas, into attainment of the 0.15 microgram per cubic meter (ug/m^3) lead NAAQS.

DATES: This final rule is effective on August 19, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2015–0708. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Stephanie Doolan, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7719, or by email at *doolan.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA.

Table of Contents

I. What is being addressed in this document?
II. Have the requirements for the approval of a SIP revision been met?
III. EPA's Response to Comments
IV. What action is EPA taking?

I. What is being addressed in this document?

In this document, EPA is granting final approval of Kansas' attainment demonstration SIP for the lead NAAQS nonattainment area in portions of Salina, Saline County, Kansas. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the CAA identified in EPA's Final Rule (73 FR 66964, October 15, 2008), and will bring the area into attainment of the 0.15 microgram per cubic meter (ug/m^3) lead NAAQS. EPA's proposal containing the background information for this action can be found at 81 FR 10162, February 29, 2016.

II. Have the requirements for the approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. EPA's Response to Comments

The public comment period on EPA's proposed rule opened February 29, 2016, the date of its publication in the **Federal Register**, and closed on March 30, 2016. During this period, EPA received one comment letter from Exide Technologies, dated March 23, 2016. The comment letter contained one comment regarding EPA's process description in section V.A.1 of the proposal which states:

> "The Exide facility in Salina, Kansas, manufactures lead acid batteries for automobiles, trucks, and watercraft. Lead emissions result from breaking open used batteries, re-melting the lead and reformulating new batteries."

Exide commented that EPA is in error regarding the description of the facility's processes; the Exide Salina, Kansas, facility does not break open used batteries, but rather, the facility maufactures new batteries at this location. EPA agrees with this comment. EPA misunderstood this portion of the facility operations. This comment does not substantively impact the decision to approve the attainment SIP, and EPA is therefore not changing its proposed action based on this comment.

IV. What action is EPA taking?

EPA is taking final action to amend the Kansas SIP to approve Kansas' attainment demonstration SIP for the 2008 lead NAAQS. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008 (73 FR 66964).

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the EPA-Approved Kansas Source-Specific Requirements. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2016. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rulemaking for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such future rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 8, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart R—Kansas

■ 2. In § 52.870:

■ a. The table in paragraph (d) is amended by adding an entry "(5)" at the end of the table; and

■ b. The table in paragraph (e) is amended by adding an entry "(43)" at the end of the table.

The additions read as follows:

§ 52.870 Identification of plan.

(d) * * *

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[1] 62 FR 27968 (May 22, 1997).

EPA-APPROVED KANSAS SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or case No.	State effective date	EPA approval date	Explanation
* *	*		* *	* *
(5) Exide Technologies	1690035	8/18/14	7/20/16, [Insert **Federal Register** citation].	

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(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*		* *	* *
(43) Attainment plan for 2008 lead NAAQS.	Salina	2/3/15	7/20/16, [Insert **Federal Register** citation].	[EPA–R07–OAR–2015–0708; 9949–13–Region 7].

[FR Doc. 2016–17065 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0015; A–1–FRL–9949–17–Region 1]

Air Plan Approval; RI; Regional Haze Five Year Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island on January 7, 2015. This SIP revision includes Rhode Island's regional haze progress report and adequacy determination for the first regional haze implementation period. This action is being taken under the Clean Air Act (CAA).

DATES: This direct final rule will be effective September 19, 2016, unless EPA receives adverse comments by August 19, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2015–0015 by one of the following methods at *www.regulations.gov,* or via email to *arnold.anne@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comments received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Anne K. McWilliams, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109—3912, telephone (617) 918–1697, facsimile (617) 918–0697, email *mcwilliams.anne@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background
II. Requirements for the Regional Haze Progress Report SIPs and Adequacy Determinations
III. EPA's Evaluation of Rhode Island's SIP Revision
  A. Regional Haze Progress Report
  B. Determination of Adequacy of Existing Regional Haze Plan
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

States are required to submit a progress report in the form of a SIP revision every five years which evaluates progress towards the Reasonable Progress Goals (RPGs) for each mandatory Class I Federal area (Class I area) [1] within the state and each Class I area outside of the State which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the state's existing SIP. *See* 40 CFR 51.308(h). The first progress report is due five years after submittal of the initial regional haze SIP. On August 7, 2009, Rhode Island submitted the State's first Regional Haze SIP in accordance with the requirements of 40 CFR 51.308.[2]

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[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)).

[2] On May 22, 2012, EPA approved Rhode Island's August 7, 2009 Regional Haze SIP to address the

On January 7, 2015, the Rhode Island Department of Environmental Management (RI DEM) submitted a revision to the Rhode Island SIP detailing the progress made in the first planning period toward implementing the Long Term Strategy (LTS) outlined in the 2009 Regional Haze submittal. Because Rhode Island is not home to a Class I area, the State's Regional Haze SIP for the first planning period does not establish RPGs. During the consultation process with nearby States with Class I areas, it was determined that Rhode Island's emissions do not cause or contribute to the visibility impairment at any Class I area. *See* 77 FR 30214. However, the State still adopted a LTS to reduce emissions during the first regional haze planning period. The January 7, 2015 SIP also included a determination that the State's existing Regional Haze SIP requires no substantial revision to achieve the established regional haze visibility improvements and emission reduction goals for 2018.

II. Requirements for the Regional Haze Progress Report SIPs and Adequacy Determination

Under 40 CFR 51.308(g), States must submit a regional haze progress report, as a SIP revision, every five years and must address the seven elements found in 40 CFR 51.308(g). As described in further detail in section III of this rulemaking, 40 CFR 51.308(g) requires: (1) A description of the status of measures in the approved regional haze SIP; (2) a summary of emissions reductions achieved; (3) an assessment of the visibility conditions for each Class I area in the state; (4) an analysis of changes in emissions from sources and activities within the state; (5) an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in Class I areas impacted by the state's sources; (6) an assessment of the sufficiency of the approved regional haze SIP; and (7) a review of the state's visibility monitoring strategy.

Under 40 CFR 51.308(h), states are required to submit, at the same time as the progress report SIP, a determination of the adequacy of their existing regional haze SIP and to take one of the following four possible actions based on information in the progress report: (1) Submit a negative declaration to EPA that no further substantive revision to the state's existing regional haze SIP is needed; (2) provide notification to EPA (and other state(s) that participated in the regional planning process) if the state determines that the existing regional haze SIP is, or may be, inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in other state(s) that participated in the regional haze planning process, and collaborated with these other state(s) to develop additional strategies to address deficiencies; (3) provide notification with supporting information to EPA if the state determines that its existing regional haze SIP is, or may be, inadequate to ensure reasonable progress at one or more Class I areas due to emissions from sources in another county; or (4) revise its regional haze SIP to address deficiencies within one year if the state determines that its existing regional haze SIP is or may be inadequate to ensure reasonable progress in one or more Class I areas due to emission from sources within the state.

III. EPA's Analysis of Rhode Island's SIP Revision

On January 7, 2015, Rhode Island submitted the "Rhode Island Regional Haze Five Year Progress Report" (Progress Report) to EPA as a SIP revision.

A. Regional Haze Progress Report

This section summarizes each of the seven elements that must be addressed by the Progress Report under 40 CFR 51.308(g); how Rhode Island's Progress Report addressed each element; and EPA's analysis and determination as to whether the State satisfied each element.

The provision under 40 CFR 51.308(g)(1) requires a description of the status of implementation of all measures included in the regional haze SIP for achieving RPGs for Class I areas both within and outside the state which may be impacted by emissions from the State. During the regional haze planning process, an area-of-influence modeling analysis based on back trajectories was used to assess Rhode Island's contribution to visibility impairment in other states.[3] Based on this analysis, Rhode Island was found to not influence visibility impairment at any Class I area. In the 2009 Rhode Island Regional Haze SIP, however, the State agreed to pursue the coordinated course of action agreed to by the Mid-Atlantic/Northeast Visibility Union (MANE–VU)[4] to assure reasonable progress toward preventing any future, and remedying any existing, impairment of visibility in the mandatory Class I areas within the MANE–VU region. Those measures are: Implementation of best available retrofit technology (BART) requirements; a low-sulfur fuel oil strategy; a targeted electricity generating unit (EGU) strategy; and continued evaluation of other control measures.[5]

In its Progress Report, Rhode Island summarized the status of these measures in accordance with the requirements under 40 CFR 51.308(g)(1). Rhode Island is not home to any BART sources or targeted EGUs. Although Rhode Island did not include a low sulfur fuel oil strategy in its 2009 Regional Haze SIP, the State committed to adopt a low-sulfur fuel strategy during the first planning period. The 2015 Progress Report details the adoption and implementation of the State's revised low sulfur fuel oil regulation[6] that requires fuel sold in the state meet a sulfur in fuel limit of 0.05% for distillate oil by 2014, 0.015% for distillate oil by 2018, and 0.5% for residual oil by 2018. With respect to the continued evaluation of other control measures, Rhode Island reiterates the State's continued participation in MANE–VU consultations.

EPA finds that Rhode Island's analysis adequately addresses the provision under 40 CFR 51.308(g)(1). The State documents the implementation of a low sulfur fuel strategy which the State committed to adopt in the 2009 Regional Haze SIP.

The provision under 40 CFR 51.308(g)(2) requires a summary of the emission reductions achieved in the state through the measures subject to the requirements under 40 CFR 51.308(g)(1). In the Progress Report, RI DEM presents the State's annual sulfur dioxide (SO_2) emissions from the 2002 RI Regional Haze SIP baseline and from the 2011

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first implementation period for regional haze. *See* 77 FR 30214.

[3] *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States,* August 2006 *http://www.nescaum.org/documents/contributions-to-regional-haze-in-the-northeast-and-mid-atlantic-united-states/mane-vu_haze_contribution_asessment-2006-0831.pdf/.*

[4] MANE–VU is a collaborative effort of State governments, Tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Northeastern United States. Member State and Tribal governments include: Connecticut, Delaware, the District of Columbia, Maine Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, and Vermont.

[5] The MANE–VU "Ask" was structured around the finding that sulfur dioxide (SO_2) emissions were the dominate visibility impairing pollutant at the Northeastern Class I areas. See "Regional Haze and Visibility in the Northeast and Mid-Atlantic States," January 31, 2001.

[6] EPA approved Rhode Island's Regulation No. 8—Sulfur Content of Fuels into the Rhode Island SIP on October 7, 2015. *See* 80 FR 60541.

emission inventory.[7] SO_2 emissions decreased from 8,026 tons per year (tpy) in 2002 to 4,839 tpy in 2011, *i.e.*, approximately a 40% reduction. RI DEM estimates that the adoption of the low sulfur fuel rule, which has compliance dates in 2014 and 2018, will result in an additional 3,000 tpy SO_2 reduction in the point and area sectors by 2018. Thus, current projections from 2011 to 2018 would be 4,839 tpy minus 3,000 tpy, or approximately 1,839 tpy. This compares well with the original RI Regional Haze SIP projection of 1,703 tons of SO_2 emissions in 2018.

EPA finds that Rhode Island has adequately addressed the provision under 40 CFR 51.308(g)(2). As discussed above, Rhode Island was not found to be contributing to the visibility impairment at any Class I area. However, the State has demonstrated a 40% reduction in the predominant visibility impairing pollutant (SO_2) and has adopted a low sulfur fuel strategy to further reduce SO_2 emissions from area and point sources by 2018.

The provisions under 40 CFR 51.308(g)(3) require that states with Class I areas within their borders provide the following information for the most impaired days and least impaired days[8] for each area, with values expressed in terms of five-year averages of these annual values: (1) Current visibility conditions; (2) the difference between current visibility conditions and baseline visibility conditions; and (3) the change in visibility impairment over the past five years.

Because Rhode Island does not have any Class I areas within its borders and the state was found not to contribute to any other Class I area, EPA concludes that Rhode Island's progress report is not required to address 40 CFR 51.308(g)(3).

The provision under 40 CFR 51.308(g)(4) requires an analysis tracking emissions changes of visibility-impairing pollutants from the state's sources by type or category over the past five years based on the most recent updated emissions inventory. In its Progress Report to address the requirements of 40 CFR 51.308(g)(4), Rhode Island presents data from the baseline 2002 and 2011 NEI statewide emissions inventories for SO_2, oxides of nitrogen (NO_X), and fine particulate ($PM_{2.5}$) for Point, Area, Onroad, and Nonroad sectors. Overall, during this period, SO_2 emissions have decreased by 40% and NO_X emissions have decreased by 17%. There was a 770 tpy or 26% increase in the $PM_{2.5}$ inventory during this same time period. RI DEM explained that the increased Area $PM_{2.5}$ inventory was due to the utilization of a wood combustion calculation tool used for the 2011 inventory which was not available for the 2002 inventory. Thus, the resulting emissions for this sub-category is not comparable between the 2002 and 2011 inventory.

EPA finds that Rhode Island's Progress Report adequately addresses the provision under 40 CFR 51.308(g)(4). RI DEM compared the most recent updated emission inventory data available at the time of the development of the Progress Report with the baseline emissions from the Regional Haze SIP. The Progress Report appropriately details the 2011 SO_2, NO_X, and $PM_{2.5}$ reductions achieved, by sector, thus far in the first Regional Haze planning period.

The provision under 40 CFR 51.308(g)(5) requires an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred over the past five years that have limited or impeded progress in reducing pollutant emissions and improving visibility in the Class I areas impacted by the state's sources. In the Progress Report, RI DEM reiterated that Rhode Island was found not to be causing or contributing to the visibility impairment at any Class I area, and that the State was implementing a low-sulfur fuel oil strategy which will lead to additional reductions in SO_2 and $PM_{2.5}$ emissions. The RI DEM also cited a Northeast States for Coordinated Air Use Management (NESCAUM) report which indicates that the MANE–VU Class I areas are on track to meet all of the 2018 visibility goals.[9]

EPA finds that Rhode Island adequately addressed the provision under 40 CFR 51.308(g)(5). There have not been any significant changes in anthropogenic emissions within the state which has limited or impeded progress in reducing pollutant emissions and improving visibility at the nearby Class I areas.

The provision under 40 CFR 51.308(g)(6) requires an assessment of whether the current regional haze SIP is sufficient to enable the state, or other states, to meet the RPGs for the Class I areas affected by emissions from the state. In the Progress Report, Rhode Island reiterated that the State is not home to any Class I area nor were the emissions from Rhode Island found to cause or contribute to the visibility impairment at any nearby Class I area. Rhode Island also showed that SO_2 emissions have decreased by 40% as of 2011 and that additional SO_2 reductions are expected with the implementation of the adopted low-sulfur fuel oil strategy. Rhode Island found that the Regional Haze SIP submittal was sufficient.

EPA finds that the state has adequately addressed the provision under 40 CFR 51.308(g)(6) which requires an assessment of whether the Rhode Island Regional Haze SIP submittal is sufficient to enable the state, or other states, to meet the RPGs for the Class I areas affected by emissions from the state.

The provision under 40 CFR 51.308(g)(7) requires the review of a state's visibility monitoring strategy for Class I areas and an assessment of whether any modifications to the monitoring strategy are necessary. Because Rhode Island does not have any Class I areas within its borders, EPA concludes that Rhode Island's Progress Report is not required to address 40 CFR 51.308(g)(7).

B. Determination of Adequacy of the Existing Regional Haze Plan

Under 40 CFR 51.308(h), states are required to take one of four possible actions based on the information gathered and conclusions made in the progress report SIP.

In the Progress Report SIP, Rhode Island took the action provided for by the provisions under 40 CFR 51.308(h)(1), which allow a state to submit a negative declaration to EPA if the state determines that the existing SIP requires no further substantive revision at this time to achieve the RPGs at nearby Class I areas. The basis for the State's negative declaration is the determination that emissions from Rhode Island do not cause or contribute to the visibility impairment at any Class I area. In addition, the State demonstrated SO_2 emission reductions achieved since the 2002 baseline of the Rhode Island Regional Haze SIP and outlined projected additional SO_2 emission reductions expected by 2018.

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[7] The 2011 data is the 2011 National Emission Inventory (NEI) data. NEI inventory uses state-supplied data or model inputs for area and non-road estimates. The following adjustments were submitted by the state: Emissions for area source industrial and commercial boilers were recalculated using a residual oil sulfur content of 1%, rather than 2.25% to reflect the actual sulfur content of oil sold in the State and sources that RI DEM inventories as point sources were subtracted from the appropriate categories in EPA's non-point (area source) inventory to avoid double counting of those emissions.

[8] The "most impaired days" and "least impaired" days in the regional haze rule refers to the average visibility impairment (measured in deciviews) for twenty percent of monitored days in a calendar year with the highest and lowest amount of visibility impairment, respectively, averaged over a five-year period. *See* 40 CFR 51.301.

[9] NESCAUM for MANE–VU, "Tracking Visibility Progress 2004–2011," revised May 24, 2013. *http://www.nescaum.org/documents/manevu-trends-2004-2011-report-final-20130430.pdf/view.*

EPA finds that Rhode Island has adequately addressed the requirements of 40 CFR 51.308(h). Even though Rhode Island does not impact the visibility at any nearby Class I areas, the State has reduced emissions of visibility impairing pollutants and is on track to achieve the long term strategy detailed in its 2009 Regional Haze SIP for the first regional haze planning period. Therefore, the existing Rhode Island Regional Haze SIP requires no substantive revisions to achieve the RPGs for nearby Class I areas.

IV. Final Action

EPA is approving Rhode Island's Regional Haze Five Year Progress Report SIP revision, submitted by RI DEM on January 7, 2015, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and (h).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 19, 2016 without further notice unless the Agency receives relevant adverse comments by August 19, 2016.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 19, 2016 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 5, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

■ 2. In § 52.2070, paragraph (e) table is amended by adding a new entry at the end of the table to read as follows:

§ 52.2070 Identification of plan.

(e) * * *

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
*	*	*	*	*
Rhode Island Regional Haze Five Year Progress Report.	Statewide	Submitted 1/7/2015	7/20/2016 [Insert **Federal Register** citation].	

[FR Doc. 2016–16941 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0270; FRL–9949–34–Region 3]

Finding of Failure To Submit a State Implementation Plan; Maryland; Interstate Transport Requirements for the 2008 8-Hour National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that Maryland has failed to submit an infrastructure state implementation plan (SIP) to satisfy certain interstate transport requirements of the Clean Air Act (CAA) with respect to the 2008 8-hour ozone national ambient air quality standard (NAAQS). Specifically, these requirements pertain to the obligation to prohibit emissions which significantly contribute to nonattainment, or interfere with maintenance, of the 2008 8-hour ozone NAAQS in other states. This finding of failure to submit establishes a 2-year deadline for EPA to promulgate a federal implementation plan (FIP) to address the interstate transport SIP requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states unless, prior to EPA promulgating a FIP, the state submits, and EPA approves, a SIP that meets these requirements.

DATES: This final rule is effective on August 19, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2016–0270. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov* or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Notice and Comment Under the Administrative Procedure Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement. Thus, notice and public procedures are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

I. Background and Overview

A. Interstate Transport SIPs

CAA section 110(a) imposes an obligation upon states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of that NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. EPA refers to this type of SIP submission as the "infrastructure" SIP because it ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an "interstate transport SIP." In turn, section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (prong 1) or interfere with maintenance of the NAAQS in any other state (prong 2). Interstate transport prongs 1 and 2, also called the "good neighbor" provisions, are the requirements relevant to this findings document.

Pursuant to CAA section 110(k)(1)(B), EPA must determine no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established per section 110(k)(1)(A). EPA refers to the determination that a state has not submitted a SIP that meets the minimum completeness criteria as a "finding of failure to submit." If EPA finds a state has failed to submit a SIP to meet its statutory obligation to address 110(a)(2)(D)(i)(I), pursuant to section 110(c)(1) EPA has not only the authority, but the obligation, to promulgate a FIP within 2 years to address the CAA requirement. This finding therefore starts a 2-year clock for promulgation by EPA of a FIP, in accordance with CAA section 110(c)(1), unless prior to such promulgation the state submits, and EPA approves, a submittal from the state to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. EPA notes this action does not start a mandatory sanctions clock pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

B. Finding of Failure To Submit for States That Did Not Submit a SIP

On March 12, 2008, EPA strengthened the NAAQS for ozone. EPA revised the 8-hour primary ozone standard from 0.08 parts per millions (ppm) to 0.075 ppm. EPA also revised the secondary 8-hour standard to the level of 0.075 ppm making it identical to the revised primary standard. Infrastructure SIPs addressing the revised standard, including the interstate transport requirements, were due March 12, 2011.

On December 27, 2012, Maryland submitted an infrastructure SIP for the 2008 ozone NAAQS. EPA determined the December 27, 2012 SIP submittal as complete on January 2, 2013. On May 2, 2014, EPA proposed approval of Maryland's infrastructure SIP submittal for the 2008 ozone NAAQS, but did not propose to take action on the portion of the submittal related to section 110(a)(2)(D)(i)(I), stating that EPA would take separate action on this part of the submittal. *See* 79 FR 25054.

On July 13, 2015, EPA published a rule finding that 24 states failed to submit complete SIPs that addressed the "good neighbor" provision for the 2008 Ozone NAAQS. *See* 80 FR 39961 (July 13, 2015).[1] The finding action triggered a 2-year clock for the EPA to issue FIPs to address the "good neighbor" requirements for those states by August 12, 2017. Prior to issuance of the finding action, Maryland made a submission addressing the "good neighbor" provision for the 2008 ozone NAAQS on December 27, 2012, therefore, the state was not included in EPA's July 2015 finding notice. Following Maryland's submittal of its infrastructure SIP and EPA's July 2015 finding notice, EPA proposed a rule on November 16, 2015[2] to address the "good neighbor" requirements for the 2008 ozone NAAQS. The rule proposed to promulgate FIPs in 23 eastern states, including Maryland, to reduce interstate ozone transport for the 2008 ozone NAAQS. EPA proposed to issue FIPs only for those states that either failed to submit a SIP or for which the EPA disapproved the state's SIP addressing the "good neighbor" provision by the date the rule was finalized. EPA expects to finalize the rule and respective FIPs, as applicable, later this year.

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[1] This finding is included in the docket for this action and available online at *www.regulations.gov.*

On April 20, 2016, EPA received a letter, dated April 12, 2016,[3] from the Maryland Department of the Environment acknowledging that the transport component of the December 27, 2012 infrastructure SIP submittal needed to be updated with additional control measures and withdrawing from EPA's consideration the section 110(a)(2)(D)(i)(I) portion of Maryland's infrastructure SIP submittal dated December 27, 2012. The letter also states that Maryland plans to submit to EPA an updated good neighbor SIP in the future.

II. Final Action

With the withdrawal of the good neighbor portion of the December 27, 2012 infrastructure SIP submittal, Maryland has not submitted to EPA a SIP to address CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. EPA is therefore finding that Maryland has failed to submit a complete good neighbor SIP to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. This finding starts a 2-year clock for promulgation by EPA of a FIP after the effective date of this final rule, in accordance with section 110(c)(1), unless prior to such promulgation that Maryland submits, and EPA approves, a submittal that meets the requirements of CAA section 110(a)(2)(D)(i)(I). This finding of failure to submit does not impose sanctions, and does not set deadlines for imposing sanctions as described in section 179, because it does not pertain to the elements of a CAA title I, part D plan for nonattainment areas as required under section 110(a)(2)(I), and because this action is not a SIP call pursuant to section 110(k)(5).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule does not establish any new information collection requirement apart from what is already required by law.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the agency has invoked the APA "good cause" exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in the CAA under section 110(a) without the exercise of any policy discretion by the EPA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule responds to the requirement in the CAA for states to submit SIPs under section 110(a) to address CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 110(a) within 3 years of promulgation of a new or revised NAAQS. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

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[2] See "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS; Proposed Rules," 80 FR 75706 (December 3, 2015).

[3] Maryland's April 12, 2012 letter inadvertently referred to an incorrect submittal date of December 31, 2012. The only infrastructure SIP submission from Maryland addressing section 110(a)(2) for the 2008 ozone NAAQS is the December 27, 2012 submittal.

This action finding that Maryland has failed to submit a CAA section 110(a)(2)(D)(I)(I) SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: July 8, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–17057 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0149; FRL–9948–64]

2-Propenoic Acid, Butyl Ester, Polymer With Ethenyl Acetate and Sodium Ethenesulfonate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate (CAS Reg. No. 66573–43–1) when used as an inert ingredient in a pesticide chemical formulation. Celanese Ltd submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate on food or feed commodities.

DATES: This regulation is effective July 20, 2016. Objections and requests for hearings must be received on or before September 19, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0149, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0149 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 19, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0149, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of April 25, 2016 (81 FR 24044) (FRL–9944–86), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10900) filed by Celanese Ltd, 222 W Las Colinas Blvd., Suite 900N, Irving, TX 75039. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate (CAS No. 66573–43–1). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.
7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as specified in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

8. The polymer's number average MW of 20,500 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate is 20,500 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate to share a common mechanism of toxicity with any other substances, and 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate.

VIII. Other Considerations

A. Existing Exemptions From a Tolerance

There are no existing exemptions from a tolerance for 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 11, 2016.

Daniel Kenny,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, add alphabetically the polymer "2-Propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate, minimum number average molecular weight (in amu), 20,500" in the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * *	*
2-Propenoic acid, butyl ester, polymer with ethenyl acetate and sodium ethenesulfonate, minimum number average molecular weight (in amu), 20,500	66573–43–1

Polymer	CAS No.

* * * * * * *

[FR Doc. 2016–17165 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 457

[CMS–2390–F2]

RIN–0938–AS25

Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects a technical error that appeared in the final rule published in the May 6, 2016 **Federal Register** (81 FR 27498 through 27901) entitled, "Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability." The effective date for the rule was July 5, 2016.

DATES: *Effective Date:* This correcting document is effective July 18, 2016.

Applicability Date: The corrections indicated in this document are applicable beginning July 5, 2016.

FOR FURTHER INFORMATION CONTACT: Melissa Williams, (410) 786–4435, CHIP.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2016–09581 (81 FR 27498 through 27901), the final rule entitled, "Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability" there was a technical error that is identified and corrected in this correcting document. The correction is applicable as of July 5, 2016.

II. Summary of Errors in the Regulations Text

On page 27896 of the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule, we made a technical error in the regulation text of § 457.10. In this paragraph, we inadvertently omitted an amendatory instruction to add the definition of "Federally Qualified HMO" in alphabetical order. Accordingly, we are revising the amendatory instruction for § 457.10 to add this definition as it was published in the May 6, 2016 **Federal Register**.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. In addition, section 553(d) of the APA mandates a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest; and includes a statement of the finding and the reasons for it in the notice. In addition, section 553(d)(3) of the APA allows the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects technical errors in the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were adopted subject to notice and comment procedures in the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule. As a result, the corrections made through this correcting document are intended to ensure that the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule accurately reflects the policies adopted in that rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule accurately reflects our final policies as soon as possible following the date they take effect. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies or making any substantive revision to the description of the definition as proposed or purported to be finalized in the preamble of the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule accurately reflects these policies. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

List of Subjects in 42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendment to part 457:

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 1. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 457.10 is amended by adding the definition of "Federally Qualified HMO" in alphabetical order to read as follows:

§ 457.10 Definitions and use of terms.

* * * * *

Federally qualified HMO means an HMO that CMS has determined is a qualified HMO under section 2791(b)(3) of the Public Health Service Act.

* * * * *

Dated: July 14, 2016.

Madhura Valverde,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2016–17157 Filed 7–18–16; 4:15 pm]

BILLING CODE 4120–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Part 752

RIN 0412–AA82

Agency for International Development Acquisition Regulation (AIDAR): Preference for Privately Owned U.S.-Flag Commercial Vessels.

AGENCY: U.S. Agency for International Development.

ACTION: Direct final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is revising the Agency for International Development Acquisition Regulation (AIDAR) clause to conform to the current requirements of the Cargo Preference Act of 1954 and provide up-to-date submission instructions to the Maritime Administration (MARAD).

DATES: This rule is effective October 18, 2016 without further action, unless adverse comments are received by September 19, 2016. If adverse comments are received, USAID will publish a timely withdrawal of this rule in the **Federal Register**. Submit comments on or before September 19, 2016.

ADDRESSES: Address all comments concerning this notice to Lyudmila Bond, Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), Room 867J, SA–44, Washington, DC 20523–2052. Submit comments, identified by title of the action and Regulation Identifier Number (RIN) by any of the following methods:

1. Through the Federal eRulemaking Portal at *http://www.regulations.gov* by following the instructions for submitting comments.

2. By Email: Submit electronic comments to *lbond@usaid.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

3. By Mail addressed to: USAID, Bureau for Management, Office of Acquisition & Assistance, Policy Division, Room 867J, SA–44, 1300 Pennsylvania Ave. NW., Washington, DC 20523–2052.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, Telephone: 202–567–4753 or Email: *lbond@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the **ADDRESSES** section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Comments submitted by email must be included in the text of the email or attached as a PDF file. Please avoid using special characters and any form of encryption. Please note that USAID recommends sending all comments to the Federal eRulemaking Portal because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington.

After receipt of a comment and until finalization of the action, all comments will be made available at *http://www.regulations.gov* for public review without change, including any personal information provided. We recommend you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute.

USAID is publishing this revision as a direct final rule as the Agency views this as a conforming and administrative amendment and does not anticipate any adverse comments. This rule will be effective on the date specified in the **DATES** section above without further notice unless adverse comment(s) are received by the date specified in the **DATES** section above.

USAID will only address substantive comments on the rule. Comments that are insubstantial or outside the scope of the rule may not be considered.

If adverse comments are received on the direct final rule, USAID will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. If no adverse comments are received, this final rule will become final after the designated period. Additionally, USAID is publishing a separate document in the "Proposed Rules" section of this **Federal Register** that will serve as the proposal to approve these AIDAR revisions if adverse comments are received.

USAID will address all public comments in a subsequent final rule based on the proposed rule. USAID will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

B. Background

USAID is revising AIDAR section 752.247–70, Preference for privately owned U.S.-flag commercial vessels to conform to the current requirements of the Cargo Preference Act of 1954. The Act mandates that at least 50 percent of the gross tonnage of all Government generated cargo be transported on privately owned, U.S.-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates. Other changes to the clause include up-to-date submission requirements to the Maritime Administration (MARAD). The changes will not impose any additional requirements on contractors.

C. Impact assessment

(1) Regulatory Planning and Review

Under E.O. 12866, USAID must determine whether a regulatory action is "significant" and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). USAID has determined that this Rule is not an "economically significant regulatory action" under Section 3(f)(1) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

(2) Regulatory Flexibility Act

The rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

(3) Paperwork Reduction Act

The rule does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 752

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR part 752 as set forth below:

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

■ 2. Amend 752.247–70:

■ i. In paragraph (a), by removing the words "46 U.S.C. 1241(b)" and adding in their place the words "46 U.S.C. 55305)" and removing the words "at least 75 percent" and adding in their place the words "at least 50 percent";

■ ii. In paragraph (b), by removing the words "programs or activities" and adding in their place the word "program" and removing the words "50 or 75 percent" and adding in their place the words "50 percent";

■ iii. In paragraph (c)(1) introductory text, by removing the words "the Division of National Cargo, Office of Cargo Preference, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590" and adding in their place the words "Office of Cargo and Commercial Sealift, Maritime Administration (MARAD), U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590"; and

■ iv. By adding paragraph (c)(1)(iii).

The addition reads as follows:

752.247–70 Preference for privately owned U.S.-flag commercial vessels.

* * * * *

(c)(1) * * *

(iii) For all shipments, scanned copies for MARAD must be sent to: *Cargo.MARAD@DOT.gov.*

* * * * *

Dated: July 6, 2016.

Mark Walter,

Acting Chief Acquisition Officer.

[FR Doc. 2016–17137 Filed 7–19–16; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2016–0028; 4500030113]

RIN 1018–BB67

Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken Removed From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are issuing a final rule to comply with a court order that vacated the final rule listing the lesser prairie-chicken (*Tympanuchus pallidicinctus*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). This final rule amends our regulations by removing the lesser prairie-chicken from the Federal List of Endangered and Threatened Wildlife and by removing the rule issued under section 4(d) of the Act for the lesser prairie-chicken.

DATES: This rule is effective July 20, 2016.

FOR FURTHER INFORMATION CONTACT: Debra Bills, Field Supervisor, Arlington Ecological Services Field Office, 2005 NE. Green Oaks Blvd., Suite 140, Arlington, TX 76006; by telephone 817–277–1100; or by facsimile 817–277–1129. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2014, we published in the **Federal Register** a final rule (79 FR 19974) listing the lesser prairie-chicken (*Tympanuchus pallidicinctus*) as a threatened species under the Act (16 U.S.C. 1531 *et seq.*) in part 17 of title 50 of the Code of Federal Regulations (50 CFR 17.11(h)). On the same day, we published a final rule under section 4(d) of the Act ("4(d) rule") for the lesser prairie-chicken (79 FR 20074) at 50 CFR 17.41(d). Please see the April 10, 2014, final listing rule for a complete discussion of previous Federal actions.

On June 9, 2014, the Permian Basin Petroleum Association; Chaves County, New Mexico; Roosevelt County, New Mexico; Eddy County, New Mexico; and Lea County, New Mexico (plaintiffs) filed a lawsuit challenging the Service's final rule to list the lesser prairie-chicken as a threatened species under the Act. On September 1, 2015, the U.S. District Court for the District of West Texas issued an order vacating the final listing rule for the lesser prairie-chicken. By invalidating the rule listing the species, the court decision also had the effect of invalidating the 4(d) rule.

Administrative Procedure

This rulemaking is necessary to comply with the September 1, 2015, court order. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are unnecessary. Because the court order had legal effect immediately upon being filed on September 1, 2015, the Director has further determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective immediately upon publication.

Effects of the Rule

This rule is an administrative action to remove the lesser prairie-chicken from the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to reflect the court's order to vacate the final rule listing this species. Consequently, this rule also removes the regulations specific to the lesser prairie-chicken at 50 CFR 17.41(d).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, for the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for "Prairie-chicken, lesser" from the List of Endangered and Threatened Wildlife.

§ 17.41 [Amended]

■ 3. Amend § 17.41 by removing and reserving paragraph (d).

Dated: July 7, 2016.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–17149 Filed 7–19–16; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 81, No. 139
Wednesday, July 20, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN29

Prevailing Rate Systems; Redefinition of the New York, NY, and Philadelphia, PA, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule that would redefine the geographic boundaries of the New York, NY, and Philadelphia, PA, appropriated fund Federal Wage System (FWS) wage areas. The proposed rule would redefine the Joint Base McGuire-Dix-Lakehurst portions of Burlington County, NJ, and Ocean County, NJ, that are currently defined to the Philadelphia wage area to the New York wage area so that the entire Joint Base is covered by a single wage schedule. This change is based on a majority recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on the administration of the FWS.

DATES: We must receive comments on or before August 19, 2016.

ADDRESSES: You may submit comments, identified by "RIN 3206–AN29," using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Brenda L. Roberts, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200.

Email: pay-leave-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2838 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is issuing a proposed rule to redefine the geographic boundaries of the New York, NY, and Philadelphia, PA, appropriated fund FWS wage areas. The proposed rule would redefine the Joint Base McGuire-Dix-Lakehurst portions of Burlington County, NJ, and Ocean County, NJ, that are currently defined to the Philadelphia wage area to the New York wage area so that the entire Joint Base is covered by a single FWS wage schedule.

Presently, portions of the Joint Base are defined to the Philadelphia and to the New York FWS wage areas as follows:

(1) The portion of the Joint Base formerly known separately as McGuire Air Force Base (AFB) is in Burlington County, NJ, and is defined to the Philadelphia wage area;

(2) The portion of the Joint Base formerly known separately as Fort Dix is in Burlington and Ocean Counties, NJ, and is defined to the Philadelphia wage area; and

(3) The portion of the Joint Base formerly known separately as Naval Air Engineering Station (NAES) Lakehurst is in Ocean County, NJ, and is defined to the New York wage area.

History of Burlington and Ocean Counties, NJ

When the Coordinated Federal Wage System (CFWS) established a uniform system of wage areas applicable to all Federal agencies in the late 1960s, Burlington County was defined to the Philadelphia survey area and Ocean County was defined to the Philadelphia area of application. Since both Burlington and Ocean Counties were defined to the Philadelphia wage area, employees at McGuire AFB, Fort Dix, and NAES Lakehurst were paid from the same Philadelphia wage schedule.

OPM reviewed the geographic definition of the New York and Philadelphia FWS wage areas in the mid-1990s as part of a comprehensive review of many FWS wage areas. After careful consideration of OPM's regulatory criteria for defining FWS wage areas, FPRAC recommended by majority vote that OPM redefine Ocean County (excluding the portion occupied by Fort Dix) from the area of application of the Philadelphia wage area to the area of application of the New York wage area. FPRAC recommended this change because Ocean County was part of the New York-Northern New Jersey-Long Island, NY-NJ-PA MSA (now called New York-Newark-Jersey City, NY-NJ-PA MSA) and the transportation facilities and commuting patterns regulatory criteria favored defining Ocean County (excluding the portion occupied by Fort Dix) to the New York wage area rather than to the Philadelphia wage area. Although NAES Lakehurst was adjacent to Fort Dix, the Committee heard local testimony that there was little workforce interaction between NAES Lakehurst and Fort Dix or McGuire AFB.

Currently, Burlington County continues to be defined to the Philadelphia survey area, and FWS employees stationed in Burlington County at the Joint Base are paid from the Philadelphia wage schedule. FWS employees stationed in Ocean County at the portion of the Joint Base formerly known separately as NAES Lakehurst are paid from the New York wage schedule. Local testimony to FPRAC from Joint Base employees and local managers indicates that the Joint Base has been presented with morale and management challenges by having employees at the Joint Base paid from two different FWS wage schedules. This poses challenges to the efficient operation of the installation. To address this anomalous situation affecting the Joint Base, OPM is proposing to add an additional criterion for defining FWS wage areas to 5 CFR 532.211.

Regulatory Criteria Under 5 CFR 532.211

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

When measuring distances from the portion of the Joint Base formerly known separately as McGuire AFB, the distance criterion favors the Philadelphia wage area more than the New York wage area. When measured to nearby survey areas, the commuting patterns criterion for Burlington County favors the Philadelphia wage area more than the New York wage area. The overall population and employment and the kinds and sizes of private industrial establishments criterion favors the Philadelphia wage area more than the New York wage area.

When measuring distances from the portion of the Joint Base formerly known separately as NAES Lakehurst, the distance criterion favors the Philadelphia wage area more than the New York wage area. When measured to nearby survey areas, the commuting patterns criterion for Ocean County favors the New York wage area more than the Philadelphia wage area. The overall population and employment and the kinds and sizes of private industrial establishments criterion favors the Philadelphia wage area more than the New York wage area.

OPM regulations at 5 CFR 532.211 do not permit splitting Metropolitan Statistical Areas (MSAs) for the purpose of defining a wage area, except in very unusual circumstances. The status of the Joint Base presents an unusual circumstance that has in the past necessitated defining the New York and Philadelphia wage areas so that MSAs are split between the two wage areas. In addition, FPRAC has a longstanding policy of recommending that OPM avoid splitting individual installations between two separate wage areas. However, OPM has not previously regulated such a policy. OPM has previously determined that Burlington County is appropriately defined to the Philadelphia wage area and Ocean County, with the exception of the Fort Dix portion, is appropriately defined to the New York wage area.

FPRAC recently completed an exhaustive review to determine the best method to treat FWS employees at the Joint Base equitably. As an exception to the regular criteria for defining FWS wage areas, FPRAC has recommended by majority vote that the Joint Base be defined entirely as a single installation. In addition, FPRAC has recommended that the Joint Base be defined to the New York wage area. OPM agrees with FPRAC's assessment to treat the Joint Base as a single installation for purposes of defining FWS wage areas. However, OPM finds that a standard analysis of the current regulatory criteria indicates that the proper definition for the entire Joint Base would be the Philadelphia wage area. To address the anomalous situation with the Joint Base and define it to the New York wage area requires an amendment to OPM's current regulatory criteria for defining FWS wage area boundaries. Therefore, OPM is proposing that 5 CFR 532.211 be amended by adding a new paragraph (f). This new paragraph would read: "(f) A single contiguous military installation defined as a Joint Base that would otherwise overlap two separate wage areas shall be included in only a single wage area. The wage area of such a Joint Base shall be defined to be the wage area with the most favorable payline based on an analysis of the simple average of the 15 nonsupervisory second step rates on each one of the regular wage schedules applicable in the otherwise overlapped wage areas." This new criterion would not impact any current wage areas other than the New York and Philadelphia wage areas which are currently overlapped by Joint Base McGuire-Dix-Lakehurst.

As of July 2015, OPM data indicate that around 630 FWS employees will be affected by the wage area changes proposed in this regulation. The New York wage schedule is currently higher than the Philadelphia wage schedule at most grade levels, which means most FWS employees at the Joint Base affected by this proposed regulation would receive higher wage rates. Those employees who would move to the New York wage schedule at grades where rates of pay are lower than on the Philadelphia wage schedule would be entitled to coverage under pay retention rules if otherwise eligible. The changes in this proposed regulation would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of a final regulation implementing any changes affecting the wage area definition of the Joint Base.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

Executive Order 13563 and Executive Order 12866

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 13563 and Executive Order 12866.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Subpart B—Prevailing Rate Determinations

■ 2. Section 532.211 is revised by adding a paragraph (f) to read as follows:

§ 532.211 Criteria for establishing appropriated fund wage areas.

* * * * *

(f) A single contiguous military installation defined as a Joint Base that would otherwise overlap two separate wage areas shall be included in only a single wage area. The wage area of such a Joint Base shall be defined to be the wage area with the most favorable payline based on an analysis of the simple average of the 15 nonsupervisory second step rates on each one of the regular wage schedules applicable in the otherwise overlapped wage areas.

■ 3. Appendix C to subpart B is amended by revising the wage area listing for the New York, NY, and Philadelphia, PA, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

NEW YORK

* * * * *

New York

Survey Area

New Jersey:
  Bergen
  Essex
  Hudson
  Middlesex
  Morris
  Passaic
  Somerset
  Union
New York:
  Bronx
  Kings
  Nassau
  New York
  Orange
  Queens
  Suffolk
  Westchester

Area of Application. Survey area plus:

New Jersey:
  Burlington (Joint Base McGuire-Dix-Lakehurst portion only)
  Hunterdon
  Monmouth
  Ocean
  Sussex
New York:

Dutchess
Putnam
Richmond
Rockland
Pennsylvania:
Pike

* * * * *

PENNSYLVANIA

* * * * *

Philadelphia

Survey Area

New Jersey:
Burlington (Excluding the Joint Base McGuire-Dix-Lakehurst portion)
Camden
Gloucester
Pennsylvania:
Bucks
Chester
Delaware
Montgomery
Philadelphia

Area of Application. Survey area plus:

New Jersey:
Atlantic
Cape May
Cumberland
Mercer
Warren
Pennsylvania:
Carbon
Lehigh
Northampton

* * * * *

[FR Doc. 2016–17029 Filed 7–19–16; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 372

[Docket No. APHIS–2013–0049]

RIN 0579–AC60

National Environmental Policy Act Implementing Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that set out our National Environmental Policy Act implementing procedures. The amendments include clarifying and amending the categories of action for which we would normally complete an environmental impact statement or an environmental assessment for an action, expanding the list of actions subject to categorical exclusion from further environmental documentation, and setting out an environmental documentation process that could be used in emergencies. The proposed changes are intended to update the regulations and improve their clarity and effectiveness.

DATES: We will consider all comments that we receive on or before September 19, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0049.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2013–0049, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0049* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Elizabeth E. Nelson, APHIS Federal NEPA Contact, Environmental and Risk Analysis Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1238; (301) 851–3089.

SUPPLEMENTARY INFORMATION:

Background

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), is the United States' basic charter for protection of the environment. The President's Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA, published in 40 CFR parts 1500 through 1508 (referred to below as the CEQ regulations) regulate the implementation of NEPA across Federal agencies.

The Office of the Secretary of the U.S. Department of Agriculture (USDA) has set forth departmental policy on the implementation of NEPA in 7 CFR part 1b. Within USDA, the Animal and Plant Health Inspection Service (APHIS) has regulations that set out its procedures for implementing NEPA in 7 CFR part 372 (referred to below as the regulations). APHIS' regulations are designed to ensure early and appropriate consideration of potential environmental effects when APHIS programs formulate policy and make decisions. The regulations also promote effective and efficient compliance with NEPA requirements and integration of other environmental review requirements under NEPA (*e.g.,* 40 CFR 1500.2(c) and 40 CFR 1500.4(k)). Consistent with the requirements of the CEQ NEPA implementing regulations, the APHIS regulations supplement the CEQ regulations and the USDA NEPA implementing regulations to take into account APHIS missions, authorities, and decision-making. The APHIS regulations include definitions, categories of actions, major planning and decision points, opportunities for public involvement, and methods of processing different types of environmental documents.

The APHIS regulations were last amended in a final rule published in the **Federal Register** on February 1, 1995 (60 FR 6000–6005, Docket No. 93–165–3; corrected on March 10, 1995, at 60 FR 13212). The CEQ regulations at 40 CFR 1507.3(a) indicate that agencies "shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act." Since 1995, APHIS has begun several new types of actions (*e.g.,* the Plant Protection Act of 2000) that are not covered in the current regulations, and gathered further data on the environmental impacts of those actions that are covered in the regulations. Accordingly, we have evaluated our regulations and identified changes that would reflect those new authorities, activities, and data. The changes we are proposing would also clarify certain areas of the regulations. APHIS has been and is consulting with CEQ regarding these changes, as required. In addition to reflecting APHIS' current responsibilities, the changes we are proposing reflect CEQ NEPA guidance that has been issued since the APHIS regulations were last amended. This guidance describes how Federal agencies can establish, revise, substantiate, and apply categorical exclusions, and how agencies can periodically review categorical exclusions to assure that they remain useful.[1]

NEPA and the CEQ regulations require all agencies of the Federal Government to include a detailed statement by the responsible official with every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. This statement must cover:

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[1] You may view the CEQ guidance document on the Internet at *https://ceq.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf.*

- The environmental impact of the proposed action,
- Any adverse environmental effects which cannot be avoided should the proposal be implemented,
- Reasonable alternatives to the proposed action,
- The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Such a detailed environmental statement is defined in the CEQ regulations as an environmental impact statement (EIS). The EIS is distinguished from the environmental assessment (EA), which is a concise public document that briefly provides sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact (FONSI). Actions taken by an agency that do not individually or cumulatively have a significant effect on the human environment, may be categorically excluded from the requirement to prepare either an EA or an EIS.

Proposed Reorganization

The CEQ regulations at 40 CFR 1507.3(b)(2) require agencies to develop specific criteria for and identification of those typical classes of action that normally require an EIS or an EA, as well as those that normally do not require further analysis in either an EIS or an EA and are thus categorically excludable actions. APHIS' regulations accomplishing this are currently found in § 372.5, "Classification of actions."

Since the last time the regulations were updated in 1995, APHIS has determined that many additional categories of APHIS actions can and should be categorically excluded. In addition, we are proposing to provide examples for broad categories of actions that would be categorically excluded and to further explain the process for using those categorical exclusions. For ease of reading, therefore, we are proposing to differentiate the categorical exclusions currently found in § 372.5 into new sections. These new sections would be numbered §§ 372.8 through 372.10 with 372.5 addressing environmental impact statements, 372.6 addressing environmental assessments, 372.7 addressing categorical exclusions in general, and 372.8 through 372.10 describing categorical exclusions. Consequently, current sections §§ 372.6 through 372.10 would be redesignated. The proposed sections are listed in Table 1, along with the paragraph in current § 372.5 to which they correspond.[2]

TABLE 1—CURRENT AND PROPOSED ORGANIZATION OF CATEGORIES OF ACTIONS IN APHIS' NEPA REGULATIONS

Proposed section	Title	Current paragraph(s) in § 372.5
372.5	Actions normally requiring environmental impact statements	(a).
372.6	Actions normally requiring environmental assessments but not necessarily environmental impact statements.	(b).
372.7	Categorical exclusions; general provisions	Introductory text of (c) and (d), (d)(1).
372.8	Categorical exclusions; conventional measures	(c)(1).
372.9	Categorical exclusions; licensing, permitting, and authorization or approval	(c)(3).
372.10	Categorical exclusions; other categories of actions	(c)(2), (c)(4).

Actions Normally Requiring Environmental Impact Statements

The introductory text of paragraph (a) of current § 372.5 sets out a description of actions APHIS takes that normally require environmental impact statements.

We are proposing to make several changes to the introductory text. First, we are proposing to refer to a category of actions rather than a class of actions. This change would be consistent with the CEQ regulations that use the phrase "category of actions." We would make this change in the rest of our regulations as well.

Second, rather than referring to policymakings and rulemakings, we are proposing to simply refer to "actions." APHIS takes actions that are not policymakings or rulemakings but which could nevertheless have a significant impact on the human environment and thus warrant an EIS. For example, APHIS' Wildlife Services (WS) program prepared an EIS for gull hazard management actions at John F. Kennedy International Airport. These actions were not part of a policymaking or a rulemaking.

We also are proposing to modify the regulations to add several types of EIS eligible actions. The current text indicates that risks to animal and plant health are the only reasons APHIS takes action. However, APHIS takes other types of actions, including those that protect or preserve property, natural resources, and human health and safety. For example, under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), APHIS may designate a plant as a noxious weed based on the damage it causes to irrigation, navigation, the natural resources of the United States, the public health, or the environment, and may take action to address the weed's harmful effects. APHIS' Wildlife Services program also undertakes actions to manage wildlife damage in order to promote or protect human health and safety, such as actions to mitigate against the risk of bird strikes on airplanes or rabies in wildlife. We would add these actions to the regulations.

The current text states that actions in this category are characterized by their broad scope and potential effect. We are proposing to qualify this statement by indicating that these characteristics typically characterize actions in this category. Sometimes, APHIS takes actions that have a broad scope, but whose impacts on the environment are not significant. The program to reduce the spread of rabies in wildlife is one example of such an action. The action may have a broad scope, but we can easily determine and characterize the likely potential effects as not significant.

We are proposing to provide more detail on what we mean by potential effects on the human environment. We would specify that, for the purposes of determining whether an action warrants an EIS, we are interested in the intensity of the potential effects, which refers to the severity of impact and is defined in 40 CFR 1508.27(b) where the regulations state that the following 10 factors should be considered in evaluating intensity: (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial; (2) The degree to which the proposed action affects public health or safety; (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas; (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial; (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks; (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration; (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts; (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources; (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973; and (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. Instead of referring to environmental quality values, we would refer to environmental components, and give the examples of air, water, soil, plant communities, and animal populations. This change would add clarity to the regulations, as "environmental quality values" has proven to cause confusion. It would also increase transparency regarding those environmental elements we consider when writing an EIS. We would also provide an example of an indicator, including, but not limited to the dissolved oxygen content of water. These would help the reader to understand the types of effects we consider to determine when to prepare an EIS.

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[2] A detailed accounting of the rationale for each of the proposed changes may be found in the document entitled "Proposed Amendments to National Environmental Policy Act Implementing Procedures (7 CFR part 372), Substantiating Document for Proposed Amendments," which is available on the Internet at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0049.*

We would remove the sentence that states that the use of new or untried methodologies, strategies, or techniques to deal with pervasive threats to animal and plant health would lead us to complete an EIS. The fact that a method is novel does not by itself mean its use will have significant environmental impacts warranting an EIS. For example, APHIS may develop a new method that involves noninvasive procedures or whose potential impacts, either positive or negative, are well understood. Neither of these actions would necessarily warrant an EIS.

We would also remove the sentence stating that, for actions that warrant an EIS, alternative means of dealing with a threat to animal and plant health usually have not been well developed. The presence or absence of alternatives by themselves does not determine the potential impacts an agency action would have on the human environment.

Paragraph (a)(1) of § 372.5 currently lists "formulation of contingent response strategies to combat future widespread outbreaks of animal and plant diseases" as an action that might normally requires an EIS. This category of actions is still appropriate, and we would retain it. Paragraph (a)(2) of § 372.5 would be slightly modified to read as follows: "Adoption of strategic or other long-range plans that prescribe a preferred course of action for future actions implementing the plan." This modification more fully captures our intent that both the overarching strategic or long-range plan itself and actions taken to implement that plan should be considered in an EIS.

The current categories of action that normally require an EIS would be found in paragraphs (a) and (b) of proposed § 372.5.

Actions Normally Requiring Environmental Assessments But Not Necessarily Environmental Impact Statements

The introductory text of paragraph (b) of current § 372.5 sets out a description of actions APHIS takes that normally require environmental assessments but not necessarily environmental impact statements. We are proposing to make this text the introductory text of a new § 372.6 and to make several changes to it.

The current text explains that "limited scope" means actions involving particular sites, species, or activities. We would expand this explanation to add State-wide or district-wide programs. We have found that agency actions of this scope can typically be adequately assessed in an EA. We would also indicate that activities may involve a specific species or similar species. We have found that impacts associated with actions involving multiple, similar species are not significantly different than actions involving a particular species.

We would expand the current discussion of potential effects. To contrast with our proposed text regarding actions that normally require an EIS, we would state that any effects of the action on environmental resources (such as air, water, soil, plant communities, animal populations, or others) or indicators (such as dissolved oxygen content of water) can be reasonably identified, and mitigation measures are generally available and have previously been successful. Again, the intensity and likelihood of the potential effects are our primary concern.

We would remove the sentences discussing the novelty of methodologies, strategies, and techniques used to deal with issues and the alternative means of dealing with those issues, for the same reasons we would remove them in our discussion of the actions that normally require an EIS.

Finally, the regulations currently list several categories of actions as actions that normally require an EA but not necessarily an EIS. However, within those general categories, there are several specific categories of action that we have determined should be subject to categorical exclusions.

In current § 372.5, paragraphs (b)(1) through (b)(5) list specific categories of actions that normally require an EA but not necessarily an EIS. Along with our proposed move of these categories to § 372.6, we are proposing to remove one category, amend two of the other current categories, and add two new categories.

Current paragraph (b)(1) lists policymakings and rulemakings that seek to remedy specific animal and plant health risks or that may affect opportunities on the part of the public to influence agency environmental planning and decisionmaking as actions that would normally require an EA. We would move this category to paragraph (a) in proposed § 372.6 and add the word "actions" to "policymakings and rulemakings." This change would ensure that the regulations reflect the broad range of activities for which APHIS prepares environmental compliance documentation.

Paragraph (b)(2) of § 372.5 lists planning, design, construction, or acquisition of new facilities, or proposals for modifications to existing facilities as actions that would normally require an EA. We would move it to paragraph (b) of proposed § 372.6, but would otherwise leave it unchanged apart from specifying that the substantial modifications to existing facilities under discussion are also included.

Paragraph (b)(3) of § 372.5 lists the disposition of waste and other hazardous toxic materials at laboratories and other APHIS facilities, except when categorically excluded, as normally requiring an EA. We would move it to paragraph (c) of proposed § 372.6, but would otherwise leave it unchanged.

Paragraph (b)(4) of current § 372.5 lists approvals and issuance of permits for proposals involving genetically engineered or nonindigenous species, except for actions that are categorically excluded, as normally requiring an EA but not necessarily an EIS. We are proposing to amend this category of action to include issuance of licenses, as well as permits, to reflect the terminology used by APHIS animal health and biotechnology programs as well as to specify that we are referring only to regulated genetically engineered or nonindigenous species. We would also move this category of action to paragraph (d) of proposed § 372.6.

We are proposing to add a new category of actions as paragraph (e) of proposed § 372.6. This paragraph would indicate that programs to reduce damage or harm by a specific wildlife species or group of species (such as deer or birds), or to reduce a specific type of damage or harm, such as protection of agriculture from wildlife depredation and disease, management of rabies in wildlife, or protection of threatened or endangered species, normally require an EA but not necessarily an EIS. Such programs are managed by APHIS' WS program. Since 1994, WS has prepared and worked under hundreds of EAs for these types of program activities. WS' EAs for program activities include review of potential environmental impacts on target species, nontarget species including threatened and endangered species, aesthetic values, and any additional issues identified through the NEPA process. WS monitors impacts of actions taken under these EAs to ensure that the EAs' analyses continue to adequately evaluate program goals, actions, and impacts. In no instance have WS' monitoring evaluations indicated that WS' actions under these types of EAs had impacts warranting preparation of an EIS.[3] For these reasons, we believe it is appropriate to establish this category of actions as requiring an EA but not necessarily an EIS.

Paragraph (b)(5) of § 372.5 currently lists two examples of research and testing actions that normally require an EA: Research and testing that will be conducted outside of a laboratory or other containment area, and research and testing that reaches a stage of development (*e.g.*, formulation of premarketing strategies) that forecasts an irretrievable commitment to the resulting products or technology. We are proposing to retain this category of action, as paragraph (f) of proposed § 372.6.

We would add a new category of action as paragraph (g): Determination of nonregulated status for genetically engineered organisms. Under current paragraph (b)(4) of § 372.5, APHIS has been preparing EAs when it determines a genetically engineered organism is not a plant pest risk and does not present significant environmental impacts. However, determining that a genetically engineered organism should not be regulated is not an action that fits within the category of an approval or an issuance of a permit or license; such actions are addressed in the corresponding proposed paragraph (d) of § 372.6. Adding this example as a separate paragraph would provide transparency and clarification about how APHIS addresses potential environmental impacts associated with actions on petitions for nonregulated status of genetically engineered organisms as described in 7 CFR 340.6. The significance factors listed in 40 CFR 1508.27 are considered when determining the appropriate environmental documentation for these actions, and our NEPA analyses have repeatedly demonstrated that the level of potential environmental impact is usually not significant, making an EA appropriate for such actions unless the significance factors listed in 40 CFR 1508.27 apply.[4]

Categorical Exclusions; General Provisions

The bulk of the changes we are proposing to the regulations relate to categorical exclusions. When experience and monitoring indicate that an action or a type of action does not have a significant or substantial impact on the human environment, establishing a categorical exclusion for that action benefits both APHIS and the public. Most actions APHIS takes are designed to prevent damage or harm to animals, plants, and human enterprises related to those animals and plants. Making these actions subject to a categorical exclusion, when appropriate, in accordance with criteria in §§ 372.7 through 372.10, benefits the human environment by allowing APHIS to take action to prevent or reduce the damage or harm more quickly than would be possible if the agency had to complete an EA or EIS for the action.

Paragraph (a) of proposed § 372.7 would set out general provisions for APHIS' use of categorical exclusions. Currently, these provisions are found in the introductory text of paragraph (c) of § 372.5. We would make two changes to the current provisions. First, the introductory text of this paragraph currently states that categorically excluded actions are similar to actions that normally require an EA but not necessarily an EIS in terms of their extent of program involvement and the scope and effect of and availability of alternatives to proposed actions. Because we are proposing to remove the text dealing with alternatives from the EIS and EA sections, we are proposing to remove it here as well.

In addition, paragraph (c) of § 372.5 currently states that the major difference between categorically excluded actions and actions that require an EA, but not necessarily an EIS, is that for categorically excluded actions, the means through which adverse environmental impacts may be avoided or minimized have actually been built into the actions themselves. The paragraph goes on to state that the efficacy of this approach generally has been established through testing and/or monitoring.

We are proposing to indicate that mitigation measures alone are not the sole key factor. Rather, there are several key factors that we should consider when determining whether a category of actions is categorically excluded, which are (1) the extent to which mitigation measures to avoid or minimize adverse environmental impacts have been built into the actions themselves and, in some cases, standard operating procedures; (2) Agency expertise and experience implementing the actions; and (3) whether testing or monitoring have demonstrated there normally is no potential for significant environmental impacts.

We would also add evaluation criteria which must be met prior to any determination of categorical exclusion. These would be found in new paragraphs 372.7(a)(1)(i) through (a)(1)(iii). The first evaluation criterion

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[3] For a current list and examples of active WS EAs, see *http://www.aphis.usda.gov/regulations/ws/ws_nepa_environmental_documents.shtml.*

[4] You may view specific examples on the Internet at *https://www.aphis.usda.gov/myportal/aphis/resources/lawsandregs/SA_Environmental_Protection/SA_Statutes/SupplementalNEPAAmendments.*

is to determine whether the action has not been segmented in order to meet the definition of a categorical exclusion. Segmentation may occur when an action is intentionally broken down into component parts in order to avoid the appearance of significance of the total action. The second evaluation criterion would be to determine whether any extraordinary circumstances exist that would require us to preclude the use of a categorical exclusion. An example of an extraordinary circumstance would be when a proposed action that is normally categorically excluded may have the potential for significant adverse environmental impacts to nontarget species. The third evaluation criterion would be whether the action occurs in a limited area, does not permanently adversely affect the area, and is performed with well-established procedures (*e.g.,* permits for GE organism field testing under specified conditions).

These changes would emphasize that actions we take do not individually or cumulatively have a significant effect on the environment, as demonstrated through long-term application or testing and monitoring, without the need to build in means to avoid or minimize environmental impacts. Many examples of such actions will be discussed later in this document.

Paragraph (d) of current § 372.5 discusses exceptions for categorically excluded actions and lists examples of such exceptions. As part of our reorganization of the list of actions subject to categorical exclusions, we are proposing to list common exceptions to categorical exclusions next to the categorical exclusions themselves in the regulatory text. We hope that this change would highlight the potential exceptions for users of the regulations. We are proposing to refer to such exceptions as "extraordinary circumstances," consistent with CEQ's instructions in the definition of "categorical exclusion" in 40 CFR 1508.4 to provide for "extraordinary circumstances in which a normally excluded action may have a significant environmental effect." (In § 372.4, which contains definitions of various terms used in the APHIS NEPA implementing regulations, we would add a definition of *extraordinary circumstances,* which would be consistent with the CEQ regulations.)

We would retain the introductory text of paragraph (d) of current § 372.5 as paragraph (b) of proposed § 372.7. It would continue to indicate that, whenever the Agency official responsible for environmental review determines that a categorically excluded action may have the potential to significantly affect the quality of the human environment, an EA or an EIS will be prepared. (In § 372.4, which contains definitions of various terms used in the APHIS NEPA implementing regulations, we would add a definition of *Agency official responsible for environmental review,* which would be consistent with the CEQ regulations.)

We are also proposing to add a new paragraph § 372.7(c), which would describe the extraordinary circumstances for individual categorically excluded actions that would preclude the use of a categorical exclusion. A list of specific extraordinary circumstances for these actions would be provided in paragraphs (c)(1) through (c)(17).

Please note that the following sections include examples of activities that we expect would result in categorical exclusions. These lists are not intended to be comprehensive accounts of all possible categorical exclusions. Any activity not listed would still have to meet the requirements for a categorical exclusion.

Categorical Exclusions; Conventional Measures

Paragraph (c)(1) of § 372.5 currently lists various categorically excluded actions under the heading of "routine measures." We are proposing to list such measures, and explanations and examples of such measures, in a new § 372.8.

As described in current paragraph (c)(1), routine measures include identifications, inspections, surveys, sampling that does not cause physical alteration of the environment, testing, seizures, quarantines, removals, sanitizing, inoculations, control, and monitoring employed by agency programs to pursue their missions and functions. The designation of these measures as "routine" has caused some uncertainty among agency personnel and the public. Certain actions that APHIS performs on a regular basis may nonetheless require us to prepare an EA or EIS each time we perform them, depending on the potential for the actions to significantly affect the human environment. What the current regulations describe is an action that occurs in a limited area, does not permanently adversely affect the area, and is performed in accordance with well-established procedures. We believe that a better description for such measures is "conventional." Therefore, we are proposing to refer to such measures as conventional measures both in our proposed description of general extraordinary circumstances for conventional measures in proposed § 372.7(c) and in proposed § 372.8.

We are proposing to change the current list of conventional measures slightly. The current list includes sampling that does not cause physical alteration of the environment. We are proposing to instead refer to monitoring, including surveys and surveillance, that does not cause physical alteration of the environment. This terminology is more commonly used within and outside APHIS to describe these activities, which will be discussed in more detail later in this document.

Paragraph (c)(1) of current § 372.5 goes on to describe the appropriate use of chemicals and other products as part of routine measures. Specifically, it states that such measures may include the use—according to any label instructions or other lawful requirements and consistent with standard, published program practices and precautions—of chemicals, pesticides, or other potentially hazardous or harmful substances, materials, and target-specific devices or remedies, provided that such use meets certain criteria.

In paragraph (a) of proposed § 372.8, we are proposing to expand the list of substances that may be used as part of a conventional measure, subject to certain conditions, to include the use of pesticides, chemicals, drugs, pheromones, contraceptives, or other potentially harmful substances, materials, and target-specific devices or remedies.

APHIS uses contraceptives, such as GonaCon, to manage populations of animals and mitigate their impacts on the environment and natural resources. APHIS uses drugs, such as the nonlethal sedative alpha chloralose, to temporarily immobilize animals for relocation or other management. Previous APHIS NEPA evaluations concluded that normal use patterns of both contraceptives and drugs do not individually or cumulatively have a significant effect on the human environment based on the limited duration and scope of their use and the design of the contraceptives and drugs, which limit effects on nontarget species.

APHIS uses pheromones to control plant pests; the pheromones mask the chemical scent of the target organism, making it difficult for the organism to find mates and reproduce. As long as pheromones are used in accordance with Environmental Protection Agency (EPA) labeling requirements, we have found that they do not individually or cumulatively have a significant effect on the human environment. In practice, we expect pheromones to have substantially less potential for adverse impacts than other chemical controls, given that they are highly species-specific and have extremely low toxicity to people and organisms (including target and nontarget organisms).

The introductory text of current § 372.5(c)(1) indicates that potentially harmful substances must be used according to any label instructions or other lawful requirements and consistent with standard, published program practices and precautions. We would retain this language in proposed § 372.8(a).

Paragraphs (c)(1)(ii)(A) through (c)(1)(ii)(C) of current § 372.5 contain three examples of routine measures. To assure clarity, we are proposing to explain in proposed § 372.8 every conventional measure listed in the introductory text and to provide examples of each conventional measure. These explanations and examples can be found in paragraphs (b) through (l) of proposed § 372.8. The proposed lists of examples are intended to illustrate each of the conventional measures, not to be exhaustive. The proposed conventional measures and their explanations and examples are discussed below.

Identifications. Identifications would include detection and identification of premises or animals, or identification of organisms, diseases, or species causing damage or harm. These processes in and of themselves do not have any significant impacts on the human environment. Examples would include, but would not be limited to: Issuance of a specific identification number and application of commodity labels, animal tags, radio transmitters, microchips, and chemicals (such as tetracycline or rhodamine B ingestion).

Inspections. Inspections would include inspections of articles (including fruits and vegetables) to determine if there are any plant pests present, which could involve cutting fruit for inspection; the physical inspection of animals upon entry into the United States; facility and records inspections; or inspections of commodities, facilities, or fields, including paperwork and records, for approval and to assure compliance with regulations and program standards. Inspections usually follow a prescribed protocol and document findings on an inspection report form. Examples would include, but would not be limited to, the physical examination of plants, plant products, and animals at the port of entry; review of containment facilities; and review of paperwork and records to assure compliance with program regulations and standards.

Inspection methods typically rely on visual observation or destruction of a small number of subsamples (for example, cutting of fruit to detect larvae) and do not individually or cumulatively have a significant effect on the human environment. Inspection of animals usually involves restraint, which is performed following established animal care and animal welfare guidelines. Inspection may also involve visual inspection of facilities, such as inspection of facilities holding animals covered under the Animal Welfare Act to verify that the animals are being held in compliance with the regulations promulgated under that act, inspection of packinghouses to verify compliance with plant health regulations, or inspections of facilities performing animal health work. These activities are not expected to have any impact on the human environment, and years of data have indicated that they do not.

Monitoring, including surveys, surveillance, and trapping, that does not cause physical alteration of the environment. Surveys would include questionnaires to collect information and data to assess a current state or trend in activities, to determine compliance, or to determine whether a pest or disease exists in a specific area. Surveys are administrative processes only and thus do not individually or cumulatively have a significant effect on the human environment.

Surveillance would include activities to collect test samples from part or all of the target population using routine collection techniques. Monitoring and surveillance generally involves limited numbers of animals (relative to State and regional populations) and a limited area. If warranted, inspection may involve the collection of a biological sample for submission to a laboratory for diagnostic testing. The quantity of any biologic samples collected is negligible (for example, 2 to 5 milliliters of blood, a punch biopsy, or a swab). Monitoring chemical residue involves the collection of small samples of environmental components (for example, water, leaves, or soil) to test for the presence of a chemical. Sample collection occurs at limited locations and times. These are standard practices used by scientists daily with no impact to the environment being sampled or to people.

Trapping would be described as the use of capture devices that are designed to efficiently capture, restrain, or kill targeted individual animals or a group of animals (*e.g.,* fruit flies and other insects, a raccoon, a sounder of feral swine). Capture devices used in trapping would be described as foothold; cage; drive; quick-kill; pit (for insects and some small rodents, reptiles and amphibians); insect and sticky traps; snares and other cable restraints; nets; hands; contained animal drugs (*e.g.,* dart guns, tranquilizer tab devices); and insecticides. Attractants used with some types of trapping are food, odor baits or lures, pheromones, shapes, and colors. Only organisms that become caught in the trap are affected. While some nontarget captures may be inevitable, the design of the traps minimizes this effect. Nevertheless, the capture of even a small number of federally listed threatened or endangered species is of concern. To address such captures, APHIS would conduct an Endangered Species Act (ESA) analysis. If the ESA analysis and other NEPA reviews indicate that the viability of a nontarget species population could be affected, we would prepare an EA for trapping.

Examples of these activities would include, but would not be limited to:

- Collection of biological or environmental samples such as tissue, soil, or water samples and samples of fecal matter.
- Continual checking, by testing, trapping, or observing for the presence, absence, or prevalence of animals, pests, or disease. This information may be used to support a pest or disease status (such as pest-free or disease-free status).
- Surveying and monitoring for disease may or may not require the lethal removal of the animal and can often be conducted using nonlethal methods, such as collection of samples from animals killed or removed for reason related to disease monitoring (*i.e.,* damage management action addressed in an EA, or hunter-killed animals).
- Randomly selecting animals and obtaining blood samples to survey for disease, or collection of test samples.

Testing. Testing would be described as the examination or analysis of a collected sample. This activity often occurs in a laboratory, but also includes nonlethal tests that require animal-side or chute-side injection and observation in the field. Testing may require the use of specialized equipment and/or diagnostic test kits. APHIS programs conduct testing using standard operating procedures that are designed to eliminate the potential for harmful environmental effects, and years of monitoring have indicated that testing itself does not have any effect on the human environment. Examples would include, but would not be limited to, intradermal tuberculosis testing of livestock and germplasm testing of plant material for viral infections.

Seizures. Seizures would include taking possession of conveyances, materials, regulated articles, plants and plant products, animals and animal products, other articles infested with a pest or determined to be diseased or exposed to a disease, a regulated article that is mixed in a commodity, or contaminated shipping material. APHIS programs seize articles to prevent the importation or interstate movement of articles that could introduce or spread pests or diseases, or to prevent the movement of articles whose movement is not authorized because its risk has not been determined. The act of seizing an article simply results in a change of the entity with control of the article and, in itself, has no significant impacts on the environment. Examples of seizures would include, but would not be limited to:

- Confiscation of a commodity that could be a vector for a plant or animal disease or pest, or an animal or plant determined to be infested, infected, exposed, or not in compliance with APHIS regulations (such as one moved illegally or without proper paperwork).
- Seizure of a nonregulated commodity, seed, or propagative material containing regulated genetically engineered material.

Quarantines. Quarantines would be described as actions to restrict or prohibit movement from an area, including the creation, expansion, removal, or modification of quarantines. Stopping or otherwise restricting the movement of animals, plants, or other regulated articles has no impact on human health or the environment and therefore falls within the definition of "categorical exclusion" in 40 CFR 1508.4.

The proposed regulations would state that the establishment of a quarantine can include mitigations to allow for movement of animals or commodities while preventing the spread of the animal or plant pest or disease; for example, we may require chemical treatment of regulated articles that are moved from the quarantined area to ensure that the articles do not spread a pest. Such mitigations would be evaluated separately from the establishment of the quarantine itself, which would be covered by this categorical exclusion.

Examples of quarantines are:

- Quarantine of an area in which a pest or disease is known to occur to prevent movement of animals, plants, or other articles whose movement could spread the pest or disease.
- Changes in pest or disease status for an area or country, such as expansion or rescission of existing quarantines.
- Removal of quarantine restrictions when APHIS determines that it is appropriate to do so.

Removals. Removals would include the relocation or lethal removal of living organisms, or destruction of materials. Only when the magnitude and scope of the removal is limited would a removal qualify as a categorical exclusion, among other things. In such circumstances, removals do not individually or cumulatively have a significant impact on the human environment. (As noted earlier, an EA or EIS would be prepared when any conventional measure, the incremental impact of which, when added to other past, present, and reasonably foreseeable future actions, has the potential for significant environmental impact.)

Some of the examples for removals would indicate the specific circumstances in which a removal would qualify for a categorical exclusion. In addition, a few of the proposed examples of removals have extraordinary circumstances in which they would not be eligible for a categorical exclusion.

Examples of removals that qualify for a categorical exclusion would include, but would not be limited to:

- Removal of animals in accordance with permits and agreements from the appropriate management agencies, or otherwise in accordance with regulations governing management of a species, for the purpose of approved research studies, surveillance and monitoring, or disease or damage management, or due to pest concerns. Such movement is typically for quarantine or testing purposes. Most confirmed cases of disease involve a very limited number of animals; therefore, the impact to the total population is negligible, especially in comparison to the potential number of animals that could be affected if the diseased animals are not removed.
- Removal of animals or material from premeses.
- Removal of trees or shrubs and plants.
- Disposal or destruction of materials for which the Agency has regulatory authority due to, for example, completion of acknowledged or permitted activities, completion of regulated activities, or noncompliance and disposal of animals. This could include disposal of regulated articles (fruit, meat, regulated genetically engineered organisms, etc.) at ports of entry designated by U.S. Customs and Border Protection. Approved methods of disposal would range from burial, feeding to animals, composting, to co-burning for power generation. These removals would be considered on a case-by-case basis and only when they are standalone actions, not tied to additional control activities on a larger scale.
- Routine disposal of carcasses using other approved methods, such as donation for human consumption, composting, chemical digestion, burial, and incineration. Carcass and waste material disposal is conducted in appropriately licensed and approved facilities, or in accordance with appropriate Federal, State and local restrictions and regulations, so any impact to human health, animal health, or the environment has been mitigated.
- Depopulation of domestic livestock and captive wildlife due to the presence of an animal disease or the reasonable suspicion of the presence of an animal disease. An extraordinary circumstance would apply, and we would prepare an EIS, if an outbreak of an animal disease would require the depopulation of a large number of animals potentially resulting in substantial or significant adverse impacts on the human environment.

Sanitizing, cleaning, and disinfection. This category of actions would include treatment of an infested commodity (such as fruits or vegetables), cleaning and disinfection that occurs when a disease is found or there is an emergency disease outbreak, treatment of a regulated article, or treatment of carcasses for disposal. Any treatment or cleaning and disinfection that uses chemicals, pesticides, or other products would have to be conducted in accordance with the criteria for the use of such substances at the beginning of proposed § 372.8 in order to be eligible for a categorical exclusion. Since such products are used in accordance with applicable label instructions, there should be no significant impact on the human environment. Nonchemical treatments, such as cold treatment or hot water dip treatment, are conducted in enclosed, temperature-controlled environments that do not affect the natural environment. Examples of sanitizing, cleaning, and disinfection would include, but would not be limited to:

- Treatment of regulated articles at existing facilities, such as irradiation treatment and methyl bromide special use treatment. For example, irradiation treatment is conducted in approved facilities that must be approved by other Federal and State agencies as sufficiently isolated from the surrounding environment that the use of irradiation does not have a significant impact.

- Treatment of a facility, container, or cargo hold at the port of entry to mitigate pest threats.
- Cleaning and disinfection of equipment, cages, facilities, or premises.
- Treatment of animal carcasses, using methods such as incineration, alkaline digestion, or rendering as a method to devitalize infectious material.

Inoculations. An inoculation would be described as the introduction of a pathogen or antigen into a living organism in order to invoke an immune response to treat or prevent a disease. Inoculations are administered to individual identifiable organisms at limited locations and times to produce internal immune responses. The limited scope and timespan of inoculations means that they do not individually or cumulatively have a significant effect on the human environment. Examples are:

- Inoculation or treatment of discrete herds of livestock or wildlife undertaken in contained areas (such as a barn or corral, a zoo, an exhibition, or an aviary).
- Use of vaccinations or inoculations, including new vaccines (including genetically engineered vaccines) and applications of existing vaccines to new species provided that the project is conducted in a controlled and limited manner, and the impacts of the vaccine can be predicted. An extraordinary circumstance would apply if a previously licensed or approved biologic has been subsequently shown to be unsafe, or will be used at substantially higher dosage levels or for substantially different applications or circumstances than in the use for which the product was previously approved. (This extraordinary circumstance comes from current paragraph (d)(2) of § 372.5.)

Animal handling and management. This would include nonlethal methods not addressed elsewhere in part 372 that are used to prevent, monitor for, reduce, or stop disease, damage, or harm caused by animals. (Some animal handling and management methods, such as removal and testing, are addressed earlier in proposed § 372.8.) APHIS' WS program has conducted many EAs examining the use of nonlethal animal handling and management methods in the context of State-wide programs. These EAs concluded that such methods have no significant impact on the human environment and resulted in FONSIs. Similarly, APHIS' Veterinary Services (VS) program may require livestock producers within quarantined areas to use generally accepted biosecurity practices as part of a disease control or eradication program. As these practices are designed to prevent the spread of animal disease, and as they are conducted in accordance with applicable Federal, State, and local regulations, they do not have a significant impact, as demonstrated by the findings of VS's EAs and FONSIs. Examples of animal handling methods included in this categorical exclusion include, but are not limited to:

- Restraining or handling livestock, poultry, or wildlife to facilitate examination or other activities.
- Cultural methods and basic habitat management such as nonlethal management activities such as removal of food sources, modification of planting systems, modification of animal husbandry practices, water control devices for beaver dams, limited beaver dam removal, and pruning trees.
- Site-specific applications of nonlethal wildlife damage management practices such as frightening devices, exclusion, capture and release, and capture and relocation.

Recordkeeping and labeling. This categorical exclusion would cover requiring regulated parties to keep records demonstrating compliance with APHIS requirements or to label regulated articles to indicate compliance or set out restrictions on the movement of the article. Recordkeeping and labeling are used as part of other measures or programs to ensure documentation of events in compliance with the regulations and other requirements. Recordkeeping and labeling thus facilitate compliance and enforcement. Such activities involve paperwork only and thus are not expected to have an impact on the human environment. Examples include, but are not limited to requiring regulated parties to:

- Maintain records documenting the results of trapping for insects.
- Maintain records of the application of treatments.
- Prepare labels indicating that the movement of a regulated article to certain areas within the United States is illegal.
- Retain records at approved livestock facilities and listed slaughtering or rendering establishments under 9 CFR part 71.

Categorical Exclusions; Licensing, Permitting, Authorization, and Approval

Paragraph (c)(3) of § 372.5 currently lists various categorically excluded actions under the heading of "licensing and permitting." We are proposing to list such actions, expanded to include authorizations and approvals as well as licensing and permitting, in a new § 372.9.

The introductory text of proposed § 372.9 would indicate that licensing and permitting refers to the issuance of a license, permit, or authorization to entities, including individuals, manufacturers, distributors, agencies, organizations, or universities for field testing, environmental release, or importation or movement of animals; plants; animal, plant, or veterinary biological products; or any other regulated article. Authorization and approval would be for an entity to participate in a program or perform an action.

Generally, APHIS has put in place restrictions on the importation and interstate movement of many articles to prevent the introduction or dissemination within the United States of animal and plant pests and diseases. Decisions to allow the importation or interstate movement of such articles are made only after determining that any risk presented by the movement of the article has been adequately mitigated. Such actions therefore would not be expected to have a significant impact on the human environment.

APHIS also licenses, authorizes, or approves entities to carry out activities to further their purposes or goals. Such licensing, authorization, or approval is done only when APHIS has determined that the entity will effectively fulfill its designated responsibilities. These actions are administrative for the agency, and generally occur in support of actions that undergo programmatic analysis in an EIS or EA. To require a separate NEPA analysis for each license, authorization, or approval would not allow expedient action to serve the public, and would promote piece-meal analyses. Even collectively, these licenses, authorizations, and approvals are not expected to individually or cumulatively have significant effect on the human environment because they are part of programs where mitigations reduce potential effects.

We are proposing to list specific examples of these actions, organized by APHIS program area, in paragraphs (a) through (c) of proposed § 372.9. Paragraph (a) would set out examples of animal health-related actions. These are:

- Approval of interstate movement or importation of animals via regulations or permits. APHIS' VS program approves such movement based on the requirements set forth in the Federal disease program regulations as reflected in the 9 CFR. Risk assessments provide the basis for determining the requirements. Examples of how VS issues approvals would include:

  - Use of permits to control the interstate movement of restricted animals, such as issuance of an official document or a State form allowing the movement of restricted animals to a particular destination.
  - Use of permits for entry, such as pre-movement authorization for entry of animals into a State from the State animal health official of the State of destination.
  - Approval of international movements through the use of import and export health certificates and import or export movement permits.
  - Authorization to move animals out of the quarantine or buffer zone for cattle fever ticks by documentation (a State form) that confirms the animals have been inspected and found to be tick-free.

- Licensing of swine garbage feeding operations. This licensing occurs after a site visit finds and documents that all applicable requirements (9 CFR part 166—Swine Health Protection) have been met, ensuring that the operations will conduct this activity properly and thus will have no impact on the human environment.
- Accreditation of private veterinarians. VS accredits veterinarians only if they are licensed and only after they complete an orientation, certify that they can complete certain tasks, and meet other requirements.
- Approval and permitting of laboratories to conduct official tests. VS approves laboratories to conduct official tests only after a site visit verifies that the tests are being conducted, recorded, and reported properly. Proper testing procedures reduce the overall likelihood that an animal disease could have an impact on the human environment by ensuring correct and timely identification of disease threats.
- Approval of identification manufacturers to produce identification, tests, and identification devices.
- Listing of slaughter and rendering establishments for surveillance under 9 CFR 71.21. The regulations in 9 CFR 71.21 require listed establishments to allow personnel from APHIS and the USDA's Food Safety and Inspection Service to conduct surveillance at the establishments.
- Approval of herd and premises plans that have environmental or waste management components. VS develops herd and premises plans in response to findings of disease in a herd or on a premises. The plans are designed to ensure that the herds remain disease-free and that animals can be safely introduced or reintroduced to the premises. Herd and premises plans may include cleaning and disinfection requirements. All cleaning and disinfection performed with cleaners and chemical disinfectants would need to be in compliance with our proposed requirements for the use of such substances as part of conventional measures, discussed earlier in this document. Herd and premises plans may also include environmental and waste management requirements to address the presence of disease, such as the removal of all manure, some removal of a certain depth of topsoil in a feedyard, spreading of lime on the soil to make the soil too basic for the organism to survive, or, as is often recommended, simply letting the pastures lay dormant (without livestock) and exposed to natural sunlight to assure elimination of the disease organism over time. For the reasons mentioned above, these practices are not expected individually or cumulatively to have a significant impact on the human environment.
- Approval of herd accreditation for tuberculosis or certification for brucellosis to document the herd's freedom from disease. This is an administrative action that poses no adverse impacts to the environment.
- Funding the depopulation of diseased herds, including indemnity and carcass disposal; authorization and funding of the collection and submission of tissue samples for testing. These are decisions that allow VS to undertake certain conventional measures described in proposed § 372.8, such as removals and implementation of biosecurity methods.
- Approval of participation in the National Poultry Improvement Plan (the Plan) by issuance of a permanent approval number in accordance with 9 CFR 145.4. This is an administrative action taken after VS has determined that a flock owner is qualified to participate in the Plan.
- Currently, paragraph (c)(3)(i) of § 372.5 sets out a categorical exclusion for the issuance of a license, permit, or authorization to ship for field testing previously unlicensed veterinary biological products. We are proposing to amend this categorical exclusion in several ways. First, we are proposing to separate authorization to ship for field testing from issuance of a license or permit. Typically, field testing must occur before a license or permit can be issued, assuming the veterinary biological product meets the requirements of the regulations. We would list these actions in two separate categorical exclusions. Second, we would expand these categorical exclusions to explicitly include previously unlicensed veterinary biological products containing genetically engineered organisms, such as vector-based vaccines and nucleic acid-based vaccines. Although such field testing could be considered to be included in the current categorical exclusion, VS' Center for Veterinary Biologics (CVB) has been completing EAs for such activities as a matter of policy, due to uncertainty about the environmental effects associated with the use of genetically engineered organisms. Accordingly, CVB has completed risk assessments and EAs for numerous vaccines containing genetically engineered organisms. The routine licensing requirements of CVB, which apply to these vaccines as well, ensure the vaccines' purity, identity, safety, potency, and efficacy. All of the EAs prepared for vaccines containing genetically engineered organisms have resulted in findings of no significant impact, and subsequent monitoring has not identified any impact these vaccines have had on the human environment. Accordingly, we believe it is appropriate to include these types of vaccines in the proposed categorical exclusions. The new categorical exclusions would read: "Authorization to ship and field test previously unlicensed veterinary biologics including veterinary biologics containing genetically engineered organisms (such as vector-based vaccines and nucleic-acid based vaccines)" and "Issuance of a license or permit for previously unlicensed veterinary biologics including veterinary biologics containing genetically engineered organisms (such as vector-based vaccines and nucleic-acid based vaccines)." Such categorical exclusions are based on field safety data and laboratory testing conducted since CVB's inception in 1976. In addition, just because an action qualifies for a categorical exclusion, it will be examined. In the unlikely event that there were a vaccine with GE organisms that were deemed likely to signifantly impact the human environment, the EA process would be initiated.
- Current paragraph (d)(3) of § 372.5 provides an extraordinary circumstance for the issuance of licenses, permits, or authorizations for shipping and field testing previously unlicensed veterinary biologics. The extraordinary circumstance applies when a previously unlicensed veterinary biological product to be shipped for field testing contains live micro-organisms or will not be used exclusively for in vitro diagnostic testing. However, as described above,

we have prepared extensive environmental documentation for the testing of such products and have not found there to be a significant impact on the human environment. Accordingly, we are not including this extraordinary circumstance in the current proposal.

- Currently, paragraph (c)(3)(iii)(C) of § 372.5 sets out a categorical exclusion for permitting of releases into a State's environment of pure cultures of organisms that are either native or are established introductions. With respect to VS activities, the term "pure cultures" refers to seeds that are used to manufacture veterinary biologics. In accordance with the definition of "pure" found in 9 CFR 101.5(c), they must be tested as determined by test methods or procedures established by APHIS and found relatively free of extraneous micro-organisms and extraneous material (organic or inorganic).

We are proposing to make minor changes to this categorical exclusion. First, we would indicate that the issuance of any license, permit, authorization, or approval for the use of a pure culture would be subject to a categorical exclusion, to cover all possible uses. Second, we would add a parenthetical explaining that pure cultures are relatively free of extraneous micro-organisms and extraneous material. Third, rather than refer to cultures that are "native or established introductions," we would instead refer to cultures that occur or are likely to occur in a State's environment. It is not necessary for the purposes of assessing environmental impact to distinguish between native organisms and established introductions of organisms, since both occur in the environment, making it unlikely for the release of a pure culture to have environmental impacts. We would determine whether an organism is likely to occur in a State based on the known distribution of the organism, environmental factors, and any other available evidence. For example, if an organism is present in all the surrounding States, it is likely to occur in the surrounded State even if the organism has not been reported there. The use of a pure culture of an organism in a State where the organism is likely to occur is not expected to have significant environmental effects due to the presumed previous presence of the organism. Finally, we would add a qualifier to the existing categorical exclusion indicating that the release of a pure culture of an organism would not qualify for a categorical exclusion if the organism is of quarantine concern. Organisms of quarantine concern are typically subject to control or eradication efforts to prevent impacts on the environment, and releases of pure cultures of such organisms could hinder such efforts.

The revised categorical exclusion would read: "Issuance of a license, permit, authorization, or approval for uses of pure cultures of organisms (relatively free of extraneous micro-organisms and extraneous material) that are not strains of quarantine concern and occur or are likely to occur in a State's environment."

- Issuance of permits and approval of facilities to import, transport, introduce, or release live animals and products or byproducts thereof, or other organisms for which proven risk mitigation measures are applied and will require no substantial modification for the specific articles under consideration. This would include importation or interstate movement of meat, milk/milk products, eggs, hides, bones, animal tissue extracts, etc., which present no disease risk or for which there are proven animal disease risk mitigation measures, such as heating, acidification, or standard chemical treatment. VS has developed common mitigations for many diseases, including sourcing only from healthy animals and from regions free of diseases of concern, quarantine and testing samples for evidence of disease, laboratory containment, and product processing procedures such as heating (including cooking or pasteurization), acidification, curing, storage, standard chemical treatment, and purification. VS conducts extensive monitoring of animal diseases to verify the efficacy of its disease mitigation approaches.

Paragraph (b) of proposed § 372.9 would set out examples of plant health-related actions that would be categorically excluded. These would include, but would not be limited to:

- Issuance of permits under 7 CFR part 330 for the importation or interstate movement of organisms into containment facilities, for the interstate movement of organisms between containment facilities, and continued maintenance and use of these organisms. The regulations in 7 CFR part 330 govern the importation and interstate movement of plant pests. Such pests, when imported or moved interstate, must be moved into containment facilities designed to prevent the escape of the pests into the surrounding environment. APHIS' Plant Protection and Quarantine (PPQ) program also amends permits to allow permit holders to continue to keep pests at the facility to which they have been transported. PPQ operates a compliance and enforcement program that involves reporting, periodic inspections, and consequences for variance from required features and procedures, up to and including destruction of organisms. In the last decade, there has been no evidence indicating that the issuance of such permits has any adverse environmental impacts. Therefore, the continued permitting for the importation and interstate movement of organisms in accordance with 7 CFR part 330 is not expected to have significant environmental effects.
- Issuance of permits for the use of organisms biologically incapable of persisting in the permitted environment. PPQ may permit the use of organisms under 7 CFR part 330 based on the environment surrounding the facility and using information about distribution, biology, and climate tolerances of organisms to ensure mismatch to the climate and season of release. For example, tropical organisms might be subject to a winter study in a greenhouse, or field study only in northern, temperate areas. Because the organisms are unable to persist in the permitted environment and are maintained in compliance with permit conditions, issuance of the permits is not expected individually or cumulatively to have a significant effect on the human environment.
- As noted earlier, paragraph (c)(3)(iii)(C) of § 372.5 currently provides a categorical exclusion for permitting of releases into a State's environment of pure cultures of organisms that are either native or are established introductions. Besides veterinary biologics, this categorical exclusion also applies to release of pure cultures of organisms to be released as biological control agents. However, the activities have some major differences, and we are therefore proposing to separate the current categorical exclusion into two separate exclusions.

In the area of biological control, a "pure culture" is loosely defined to include field collections of predators and parasites that are identified on sight as the desired organism. There is no reason or need to "sterilize" or remove contaminants prior to re-release.

Rather than refer to cultures that are "native or established introductions," we would instead refer to organisms that occur, or are likely to occur, in a State's environment. For the purposes of assessing environmental impact, distinguishing between native organisms and established introductions of organisms would require identification of distinguishing traits. These types of traits may not exist, and even if they do exist, would require specific testing to confirm. Additionally, gaps in the reported distributions in the scientific literature remain because often there are few incentives to publish "new finds" of an organism in a State. Based on the last decade of permitting experience, when contiguous States have confirmed reports of the organism, the release of that organism into a nearby State lacking confirmed reports is not expected to have significant environmental effects. For these types of permits, we would continue to determine whether an organism is likely to occur in a State based on the known distribution of the organism, environmental factors, and any other available evidence.

We would not categorically exclude the release of an organism of quarantine concern. Organisms of quarantine concern typically are subject to control or eradication efforts to prevent impacts on the environment, and releases of these organisms could hinder such efforts. We would restrict the permitted use of organisms of quarantine concern to containment facilities for research purposes.

Finally, besides the movement of pure cultures, other organisms may also be moved interstate for field release, for purposes such as field research outside containment facilities. PPQ only permits such movement when the organism occurs or is likely to occur in a State's environment; as described above, the movement of an organism to a State where PPQ has determined it is likely to occur is not expected to have a significant impact on the human environment, and has not over the past decade. As these two processes are similar, we would address them in the same categorical exclusion.

Therefore, the new plant health-specific categorical exclusion would read: "Issuance of permits for uses outside of containment that are pure cultures of organisms and that are not strains of quarantine concern and occur or are likely to occur in a State's environment, and issuance of permits for the interstate movement of organisms that occur or are likely to occur in a State's environment."

- Issuance of permits or approvals for the importation of articles that are regulated due to plant health concerns, when the permit contains conditions that will mitigate any plant pest risk associated with the articles. PPQ issues permits and approvals for the importation of plants, plant products, and other articles that could introduce quarantine pests into the United States. PPQ does so only after determining that any risk associated with the importation of the articles has been mitigated, thus ensuring that the importation would not have a significant impact on the human environment. Mitigations are typically conventional measures, as described in proposed § 372.8; if mitigations have impacts on the human environment, their use would be evaluated separately from the decision to issue a permit to ensure that appropriate NEPA documentation is completed.
- Issuance of certificates or limited permits for the movement of regulated articles from areas quarantined due to plant pests. PPQ establishes domestic quarantines for quarantine pests and conditions for the movement of articles that could spread those pests under its regulations in 7 CFR parts 301, 302, and 318. Similar to importation of articles, PPQ issues certificates or limited permits for the interstate movement of such articles only after determining that any risk associated with the importation of the articles has been mitigated, thus ensuring that the movement would not have a significant impact on the human environment.
- Issuance of permits for the importation or interstate movement of noxious weeds and other regulated seeds. PPQ designates certain plants as noxious weeds in accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*). The regulations in 7 CFR part 360 require permits for the importation and interstate movement of regulated noxious weeds. PPQ only issues permits when conditions are available to prevent the release of the regulated noxious weed into the environment, thus mitigating any potential risk to the environment. Similarly, PPQ enforces certain restrictions on the importation of seed under the Federal Seed Act and under the regulations in 7 CFR part 361. PPQ's enforcement of these restrictions mitigates any risk to the human environment that could arise from these importations.
- Issuance of permits for prohibited or restricted articles unloaded and landed for immediate transshipment or transportation and exportation. Transshipment or transportation and exportation of restricted articles is regulated under 7 CFR part 352. Permits for such movement are granted only when sufficient safeguards are in place to prevent any plant pests that may have infested the shipment from being introduced into the United States. This ensures that such activities do not have any effect on the human environment.

Paragraph (c) of proposed § 372.9 would set out examples of biotechnology-related actions that would be categorically excluded. These would include, but would not be limited to:

- Issuance of permits for the importation, interstate movement, or environmental release of regulated genetically engineered organisms, provided that confinement measures (the permit conditions or performance measures), such as isolation distances from compatible relatives, control of flowering, or physical barriers, minimize the interaction of the regulated article with the environment. APHIS' Biotechnology Regulatory Services (BRS) program issues permits for importation or interstate movement of such articles only after determining that any risk associated with the importation or interstate movement of the articles has been sufficiently mitigated, thus ensuring that the importation or movement would not have a significant impact on the human environment. The regulations in 7 CFR part 340 govern the issuance of permits for the importation and interstate movement of certain genetically engineered organisms and products. Confinement measures are included in the permits; the confinement process is designed to ensure that the environmental release will not have a significant impact on the human environment.

Current paragraph (d)(4) of § 372.5 indicates that an extraordinary circumstance will apply when a confined field release of genetically engineered organisms or products involves new species or organisms or novel modifications that raise new issues. We are proposing that an extraordinary circumstance would apply when new permit conditions are included to address uncertainty about whether existing confinement measures will be sufficient to prevent the interaction of the genetically engineered organism with the environment. We believe the added specificity of our proposed extraordinary circumstance will better communicate the types of concerns that might lead us to prepare an EA for a confined field release.

- Extension of nonregulated status under 7 CFR part 340 to organisms similar to those already deregulated. The regulations in that part allow for an applicant to request an extension or for BRS to initiate an extension based on the similarity of a regulated organism to an antecedent organism that has been deregulated. BRS then examines information and assesses whether the regulated article in question raises no serious new issues meriting a separate review under the petition process. Because requests for extensions of nonregulated status assess regulated articles that are similar to the deregulated antecedent organism, the regulated article is presumed to interact with the environment in the same way as the antecedent. EAs for extensions of nonregulated status incorporate the antecedent organism as part of the baseline or no action alternative. We have completed nine EAs for extensions of nonregulated status since 2000. Because the regulated organism (the subject of the request) is so similar to non-regulated organisms that are currently in the environment, the EAs have found no difference with respect to the impacts on biological or physical environment between the two organisms. Moreover, all of the assessments have resulted in findings of no significant impact. For these reasons, we believe it would be appropriate to establish a categorical exclusion for this category of actions.

- Notifications for environmental release, importation, or interstate movement of articles regulated under 7 CFR part 340. The notification process is described in 7 CFR 340.3. It is an administratively streamlined alternative to a permit for the introduction of an article regulated under that part. The article must meet certain eligibility criteria designed to reduce risk, and the introduction must meet six performance standards. These include confinement and devitalization methods that are designed to further mitigate potential environmental impacts, if any.

Categorical Exclusions; Other Categories of Actions

Paragraph (c)(2) of § 372.5 currently lists various categorically excluded actions under the heading of "research and development." In addition, paragraph (c)(4) provides a categorical exclusion for the rehabilitation of APHIS facilities. As the descriptions of these categorical exclusions are not as extensive as the descriptions of conventional measures and of licensing, permitting, and authorization or approval, we are proposing to combine these categories of actions and list them in a new § 372.10.

Paragraph (c)(2)(i) of § 372.5 currently provides a description of research and development activities; we are proposing to provide this description in the introductory text of paragraph (a) of proposed § 372.10. Such activities are currently described as activities that are carried out in laboratories, facilities, or other areas designed to eliminate the potential for harmful environmental effects—internal or external—and to provide for lawful waste disposal.

We are proposing to make a few changes to this text. We would indicate at the beginning of this description that research and development activities that would be eligible for a categorical exclusion under proposed § 372.10 are those limited in magnitude, frequency, and scope. This would clarify why research and development activities usually have minimal effects on the environment.

Paragraph (c)(2)(ii) of current § 372.5 lists three examples of research and development activities that are categorically excluded:

- The development and/or production (including formulation, repackaging, movement, and distribution) of previously approved and/or licensed program materials, devices, reagents, and biologics;
- Research, testing, and development of animal repellents; and
- Development and production of sterile insects.

We are proposing to amend these examples and add three more in paragraphs (a)(1) through (a)(6) of proposed § 372.10.

Paragraph (a)(1) would provide a new categorical exclusion for vaccination trials that occur on groups of animals in areas designed to limit interaction with similar animals, or that include other controls needed to mitigate potential risk. The study design in these cases eliminates the potential for impacts on organisms other than the test subjects.

Paragraph (a)(2) would provide a new categorical exclusion for the evaluation of uses for chemicals not specifically listed on the product label, as long as they are used in a manner designed to limit potential effects to nontarget species such that there are no individual or cumulative impacts on the human environment. Such evaluation is necessary to determine whether chemicals may be effective against organisms not listed on the label as targets, or whether means of applying the chemical other than those listed on the label may be effective and safe. Many of these evaluations will be subject to experimental use permits issued by EPA with associated conditions to limit potential effects such that there are no individual or cumulatively significant impacts on the human environment. Other evaluations may have products that have been identified by EPA as mimimum risk and therefore do not require a full Federal Insecticide, Fungicide, and Rodenticide Act registration. However, APHIS still does an environmental review to ensure safe use and no extraordinary circumstances.

Paragraph (a)(3) would expand on the current categorical exclusion that applies to the development and/or production of certain articles. We would amend this exclusion to include the development and/or production of program materials, devices, reagents, and biologics that are for evaluation in confined animal, plant, or insect populations under conditions that prevent exposure to the general population (*e.g.,* conducted in laboratories or other facilities with established environmental and human safety protocols). Since the use is limited and the general population should not be exposed, the development or production of these articles would not have a significant impact on the human environment.

Paragraph (a)(4) would provide a new categorical exclusion for research using chemicals, management tools, or devices to test the efficacy of methods; new vaccinations not currently approved to test in the natural environment; the use of mechanical devices (such as noise and light deterrence); and existing vaccinations, chemicals, or devices used in a new way on an animal, pest, or disease similar to those on which they have previously been used.

Paragraph (a)(5) would expand on the current categorical exclusion for the research, testing, and development of animal repellents. As amended, the categorical exclusion would include all research related to the development and evaluation of wildlife management tools, such as animal repellents, scare devices, fencing, and pesticides. As indicated in the introductory text of proposed paragraph (a), APHIS research using the methods described in proposed paragraphs (a)(4) and (a)(5) is limited in magnitude, frequency, and duration, meaning it is not likely to have a significant impact on the human environment. APHIS has conducted many EAs on the operational use of functionally similar methods, and those methods have had no significant impact. APHIS research involving modifications of commonly used techniques is generally intended to improve the efficacy and selectivity of these methods and would be expected to have similar or less risk of adverse impact than the methods operationally in use.

Paragraph (a)(6) would contain the current categorical exclusion for the development and production of sterile insects. We would amend this categorical exclusion to include the release of sterile insects as well. Sterile insects are bred in captivity, sterilized, and released into the environment, where they reduce the fecundity of pest populations. Environmental effects are limited due to the lack of offspring resulting from mating with the wild population. Research activities included in this category can differ from field releases discussed in proposed § 372.9 because they may be done with novel organisms and for limited duration. Research may also include novel methods for inducing sterility.

Paragraph (b) of proposed § 372.10 would expand on the categorical exclusion for the rehabilitation of APHIS facilities currently found in paragraph (c)(4) of § 372.5. Paragraph (c)(4) currently indicates that rehabilitation of existing laboratories and other APHIS facilities, functional replacement of parts and equipment, and minor additions to existing APHIS facilities are subject to categorical exclusion. We would retain this list, replacing the word "rehabilitation" with "renovation," as the term better captures the nature of the work. We would also add categorical exclusions for the improvement, maintenance, and construction of APHIS facilities.

APHIS frequently needs to improve and maintain its facilities. Such improvement and maintenance often involves minor excavations and repairs to sidewalks and grounds. We would add these as actions that are categorically excluded, provided that they involve disturbances with negligible adverse impacts on the environment.

More extensive improvements may involve construction, expansion, or improvement of a facility when the permitting and approval process requires measures that address potential environmental effects. (For example, local or State regulations may require that certain construction techniques be used to reduce the effect of the construction on the human environment.) We are proposing to add a categorical exclusion for these more extensive improvements, if they meet the following requirements:

- The structure and proposed use are in compliance with all Federal, State, Tribal and local requirements (including Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management," and other Federal Executive orders);
- The site and the scale of construction are consistent with those of existing adjacent or nearby buildings; and
- The size, purpose and location of the structure is unlikely to have significant environmental consequences or create public controversy.

A facility construction, expansion, or improvement that met these criteria would not be expected to have a significant effect on the human environment because the scope and impacts of the action would remain relatively small.

Process for Rapid Response to Emergencies

We are proposing to add a new section describing the process APHIS follows to develop environmental documentation when conducting a rapid response to an emergency. The new section reflects the CEQ guidance discussed previously. Adding new §§ 372.6 through 372.10 would require us to move the other sections in part 372. We are proposing to combine current §§ 372.6 and 372.7, which deal with early planning and consultation on NEPA matters, because they are quite short and discuss related subjects. For this reason, the last section of the current NEPA regulations would be § 372.14 under this proposal, and we are therefore proposing to add this section as § 372.15.

APHIS frequently takes important emergency actions to prevent the spread of animal and plant pests and diseases. Without emergency action to control the spread of these pests and diseases there is a potential for significant impacts on the human environment. Many actions APHIS takes in emergencies would be categorically excluded from the need to prepare further NEPA documentation under this proposal, as these actions often fall into the categories described in proposed §§ 372.8 through 372.10. Primary examples of such actions can include quarantine, surveillance, decontamination and/or cleaning, and depopulation and disposal. However, particularly when emergency actions are not categorically excluded, it is important to minimize the potential environmental effects of those actions.

The proposed introductory section of § 372.15 would first state that, an emergency exists when immediate threats to human health and safety or immediate threats to sensitive or protected resources require that action be taken in a timeframe that does not allow sufficient time to follow the procedures for environmental review established in the CEQ regulations and these regulations.

Proposed paragraph (a) of § 372.15 would then stipulate that when the Administrator of APHIS or the Administrator's delegated Agency official responsible for environmental review determines that an emergency exists that makes it necessary to take immediate action to prevent imminent damage to public health or safety, or sensitive or protected environmental resources in a timeframe that precludes preparing and completing the usual NEPA review, which is comprised of analysis and documentation, the responsible APHIS official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practicable.

Proposed paragraph (b) of § 372.15 would specify that, if a proposed emergency action is normally analyzed in an EA and the nature and scope of proposed emergency actions are such that there is insufficient time to prepare an EA and FONSI before commencing the proposed action, the Administrator shall consult with APHIS' Chief of Environmental and Risk Analysis Services (ERAS) about completing the required NEPA compliance documentation and may authorize alternative arrangements for completing the required NEPA compliance documentation. Any alternative arrangements should focus on minimizing adverse environmental impacts of the proposed action and the emergency, and they are limited to those actions that are necessary to control the immediate aspects of the emergency. To the maximum extent practicable, these alternative arrangements should include the content, interagency coordination, and public notification and involvement that would normally be undertaken for an EA concerning the action and cannot alter the requirements of the CEQ regulations at 40 CFR 1508.9(a)(1) and (b). Any alternative arrangement also must be documented, and APHIS' Chief of ERAS will inform CEQ of the alternative arrangements at the earliest opportunity.

Proposed paragraph (c) of § 372.15 would state that APHIS shall immediately inform CEQ, through APHIS' interagency NEPA contact, when the proposed action is expected to result in significant environmental effects and there is insufficient time to allow for the preparation of an EIS. APHIS would consult CEQ and request alternative arrangements for preparing the EIS documentation in accordance with CEQ regulations.

These procedures are consistent with the CEQ regulations and guidance, and they provide clear direction to APHIS staff and the public on how APHIS will approach emergency NEPA compliance. By explicitly providing for these emergency situations within our implementing regulations, we would ensure that timely emergency actions to counter disease and pest risks can be implemented and also ensure appropriate compliance with NEPA requirements.

Miscellaneous Changes

The name and address provided for the Agency's NEPA contact (§§ 372.3 and 372.4) are outdated. This proposal would update that information. The present agency contact for APHIS is Environmental and Risk Analysis Services, PPD, APHIS, USDA, 4700 River Road, Unit 149, Riverdale, MD 20737–1238; (301) 851–3089.

Due to the proposed reorganization of APHIS' NEPA implementing regulations, paragraph (a)(3) of current § 372.9 would be found in § 372.13. This paragraph has indicated that, when changes are made to EAs and findings of no significant impact, all commenters on the EA will be mailed copies of changes directly. Due to the high volume of comments we receive that do not include mailing addresses, this provision is impractical, and we are proposing to remove it from the regulations. Consistent with the CEQ regulations at 40 CFR 1506.6(b)(1), paragraph (a)(3) of proposed § 372.13 would indicate that we would mail notice to those who provide a mailing address and who have specifically requested it on an individual action. We would continue to make all our environmental documentation publicly available on the APHIS Web site and interested parties can sign up for notifications from *Regulations.gov* to be emailed when new documents are added to the docket for a regulatory action. Interested parties can also sign up on APHIS' Stakeholder Registry[5] to receive email notification on any specific actions.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The proposed rule would amend regulations that guide APHIS' implementation of the National Environmental Policy Act (NEPA). The amended regulations would clarify when an environmental impact statement (EIS) or an environmental analysis (EA) for an action is normally required, provide additional categories of actions for which we would prepare such documents, expand the list of actions subject to categorical exclusion from further environmental documentation and provide examples of such actions, and establish an environmental documentation process for use in regulatory emergencies.

Potentially affected entities include individuals, businesses, organizations, governmental jurisdictions, and other entities involved with APHIS in the NEPA process. A small number of these entities may experience time and money savings. For example, in 2014 we estimate that 7 of 62 EAs would have qualified for a categorical exclusion under the amended regulations. In 2015 and 2016 respectively, we estimated that 10 of 87 and 7 of 25 EAs would have qualified for a categorical exclusion under the amended regulations. Resulting cost savings for APHIS and the affected entities are difficult to quantify and would vary by the nature of the proposed actions. It typically takes 1 week to 3 months to prepare an EA to begin clearance. It typically takes 2 to 3 years to prepare an EIS to begin clearance.

The proposal would make APHIS' NEPA process more transparent and efficient. The effects would be beneficial, but not significant. A small number of entities may experience time and money savings as a result of not having to provide the information necessary for completion of an EA. Affected small entities would include university researchers, research companies that produce veterinary biologics, research and diagnostic labs serving farmers, and producers of biocontrol agends, including Tribal entities. The proposed rule would not have a significant economic impact on a substantial number of small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

APHIS has assessed the potential impact of this proposed rule and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, APHIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

National Environmental Policy Act

This proposed rule would revise the regulations that guide APHIS employees in NEPA analysis and documentation for animal and plant health management, wildlife damage management, and animal welfare management activities. CEQ regulations do not require agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA, and thus no NEPA document was prepared for this proposed rule. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three categories of actions: Those that require preparation of an EIS; those that require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Agency NEPA procedures assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

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[5] At *https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new*.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 372

Administrative practice and procedure, Environmental assessment, Environmental impact statement.

Accordingly, we are proposing to amend 7 CFR part 372 as follows:

PART 372–NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 40 CFR parts 1500–1508; 7 CFR parts 1b, 2.22, 2.80, and 371.9.

§ 372.1 [Amended]

■ 2. Section 372.1 is amended by adding the word "(NEPA)" after the word "Act" the first time it occurs; and by removing the second and third occurrences of the words "the National Environmental Policy Act" and adding the word "NEPA" in their place.

■ 3. Section 372.3 is revised to read as follows:

§ 372.3 Information and assistance.

Information, including the status of studies, and the availability of reference materials, as well as the informal interpretations of APHIS' NEPA procedures and other forms of assistance, will be made available upon request to the APHIS NEPA contact at: Policy and Program Development, APHIS, USDA, Attention: NEPA Contact, 4700 River Road, Unit 149, Riverdale, MD 20737–1238, (301) 851–3089.

■ 4. Section 372.4 is amended as follows:

■ a. In the introductory text, by adding the words "and definitions" after the word "terminology", by removing the word "(CEQ)", and by removing the word "is" and adding the word "are" in its place;

■ b. By revising the definitions of *decisionmaker* and *environmental unit;* and

■ c. By adding, in alphabetical order, definitions of *Agency official responsible for environmental review* and *extraordinary circumstances.*

The additions and revisions read as follows:

§ 372.4 Definitions.

* * * * *

Agency official responsible for environmental review. The Chief of APHIS' Environmental and Risk Analysis Services.

* * * * *

Decisionmaker. The agency official responsible for signing the categorical exclusion or findings of no significant impact (FONSI) and environmental assessment or the record of decision following the environmental impact statement (EIS) process.

* * * * *

Environmental unit. The analytical unit in Policy and Program Development responsible for coordinating APHIS' compliance with NEPA and other environmental laws and regulations.

Extraordinary circumstances. Circumstances in which an action that is normally categorically excluded may have the potential for a significant environmental effect. When an extraordinary circumstance occurs, APHIS will determine whether those circumstances raise potential environmental issues that merit further analysis in an environmental impact statement or environmental assessment.

■ 5. Section 372.5 is revised to read as follows:

§ 372.5 Environmental impact statements.

Actions normally requiring environmental impact statements. Actions in this category typically involve the agency, an entire program, or a substantial program component; and may include programmatic for reducing risks to animal and plant health and other human interests such as property, natural resources, and human health and safety. Actions in this category are typically characterized by their broad scope (often nationwide) or their intensity of potential effects (impacting a wide range of environmental components including, but not limited to air, water, soil, plant communities, or animal populations) or indicators (including, but not limited to dissolved oxygen content of water), whether or not affected individuals or systems can be reasonably completely identified at the time. An environmental impact statement will also normally be prepared when an environmental assessment identifies a potential for significant impacts based upon the context and intensity factors listed by the Council on Environmental Quality (CEQ) at 40 CFR 1508.27. An EIS would also be required for an action whose scope is limited to a relatively small geographic area where there is the potential for significant impacts or there is a high degree of uncertainty concerning the potential impacts. Examples include, but are not limited to:

(a) Formulation of contingent response strategies to combat future widespread outbreaks of animal and plant diseases.

(b) Adoption of strategic or other long-range plans that prescribe a preferred course of action for future actions implementing the plan.

§ 372.6 [Redesignated as § 372.11]

■ 6. Section 372.6 is redesignated as § 372.11.

§ 372.7 [Removed]

■ 7. Section 372.7 is removed.

§§ 372.8 through 372.10 [Redesignated as §§ 372.12 through 372.14]

■ 8. Sections 372.8 through 372.10 are redesignated as §§ 372.12 through 372.14, respectively.

■ 9. New §§ 372.6 through 372.10 are added to read as follows:

§ 372.6 Environmental assessments.

Actions normally requiring environmental assessments. This category of actions is typically related to a more discrete program component but could be programmatic; however, the potential environmental impacts associated with the proposed action are not considered potentially significant at the outset of the planning process. An action in this category is typically characterized by its limited scope (particular sites, State-wide or district-wide programs, specific or similar species, or particular activities). Any effects of the action on environmental resources (such as air, water, soil, plant communities, animal populations, or others) or indicators (such as dissolved oxygen content of water) can be reasonably identified, and mitigation measures are generally available and have previously been successful.

Actions normally requiring an environmental assessment, but not necessarily an environmental impact statement, include:

(a) Policymakings, rulemakings, and actions that seek to remedy specific animal and plant health risks or that may affect opportunities on the part of the public to influence agency environmental planning and decisionmaking. Examples of this category of actions include:

(1) Development of program plans to adopt strategies, methods, and techniques as the means of dealing with particular animal and plant health risks that may arise in the future; and

(2) Implementation of program plans at the site-specific action level.

(b) Planning, design, construction, or acquisition of new facilities, or proposals for substantial modifications to existing facilities.

(c) Disposition of waste and other hazardous or toxic materials at laboratories and other APHIS facilities.

(d) Approvals and issuance of permits or licenses for proposals involving regulated genetically engineered or nonindigenous species.

(e) Programs to reduce damage or harm by a specific wildlife species or group of species, such as deer or birds, or to reduce a specific type of damage or harm, such as protection of agriculture from wildlife depredation and disease; for the management of rabies in wildlife; or for the protection of threatened or endangered species.

(f) Research or testing that will be conducted outside of a laboratory or other containment area or reaches a stage of development (*e.g.,* formulation of premarketing strategies) that forecasts an irretrievable commitment to the resulting products or technology.

(g) Determination of nonregulated status for genetically engineered organisms.

§ 372.7 Categorical exclusions; general provisions.

(a)(1) Categorically excluded actions share many of the same characteristics—particularly in terms of the extent of program involvement, as well as the scope and effect of proposed actions—as actions that normally require environmental assessments but not necessarily environmental impact statements. APHIS considers that mitigation measures alone are not the sole key factor. Rather, there are several factors that should be included in determining whether a category of actions is categorically excluded: The extent to which mitigation measures to avoid or minimize adverse environmental impacts have been built into the actions themselves and, in some cases, standard operating procedures; Agency expertise and experience implementing the actions; and whether testing or monitoring have demonstrated there normally is no potential for significant environmental impacts. The use of a categorical exclusion requires the following three evaluation criteria be met:

(i) *The action has not been segmented.* Determine whether the action has not been segmented to meet the definition of a categorical exclusion. Segmentation may occur when an action is intentionally broken down into component parts in order to avoid the appearance of significance of the total action. An action can be too narrowly defined, minimizing potential impacts in an effort to avoid a higher level of NEPA documentation. The scope of an action must include the consideration of connected actions, and the effects when applying extraordinary circumstances must consider cumulative impacts.

(ii) *No extraordinary circumstances exist.* Determine whether the action involves any extraordinary circumstances that would require us to preclude the use of a categorical exclusion.

(iii) The action occurs in a limited area, does not permanently adversely affect the area, and is performed with well-established procedures.

(2) The Department has promulgated a listing of categorical exclusions that are applicable to all agencies within the Department unless their procedures provide otherwise. The Departmental categorical exclusions, codified at § 1b.3(a) of this title, apply to APHIS. Additional categorical exclusions specific to APHIS are provided in §§ 372.8 through 372.10.

(3) The use of a categorical exclusion does not relieve the responsible Agency official from compliance with other statutes, such as the Resource Conservation and Recovery Act, the Endangered Species Act, or the National Historic Preservation Act. Such consultations may be required to determine the applicability of the categorical exclusion screening criteria.

(4) For categorical exclusions requiring a brief presentation of conclusions reached during screening and review of extraordinary circumstances, determinations should be presented in a record of environmental consideration. This determination can be made using current information and expertise as long as the basis for the determination is included in the record of environmental consideration. Copies of appropriate interagency correspondence can be attached to the record of environmental consideration. Example conclusions that may be reached after a review of extraordinary circumstances include:

(i) The U.S. Fish and Wildlife Service concurred through informal consultation that endangered or threatened species or designated habitat are not likely to be adversely affected.

(ii) The U.S. Army Corps of Engineers determined that the action is covered by a nationwide general permit.

(iii) State and/or local natural resource agencies have been consulted to ensure compliance with applicable environmental laws and regulations for protecting and managing natural resources such as native plant and animal species.

(b) Whenever the Agency official responsible for environmental review determines that an extraordinary circumstance is present such that a normally categorically excluded action may have the potential to significantly affect the quality of the human environment, an environmental assessment or an environmental impact statement will be prepared. Specific extraordinary circumstances for individual categorically excluded actions are listed with those actions in §§ 372.8 through 372.10.

(c) *General extraordinary circumstance for conventional measures.* An environmental assessment or environmental impact statement will be prepared when an extraordinary circumstance is present such that a normally categorically excludable action, as identified in §§ 372.8 through 372.10, has the potential to significantly affect the quality of the human environment. General extraordinary circumstances that preclude the use of a categorical exclusion are:

(1) A reasonable likelihood of significant impact on public health or safety.

(2) A reasonable likelihood of significant environmental effects (direct, indirect, and cumulative).

(3) A reasonable likelihood of involving effects on the environment that involve risks that are highly uncertain, unique, or are scientifically controversial.

(4) A reasonable likelihood of violating any Executive Order, Federal law, or requirements imposed for the protection of the environment.

(5) A reasonable likelihood of adversely affecting environmentally sensitive resources, unless the impact has been resolved through another environmental process (*e.g.,* the Coastal Zone Management Act, National Historic Preservation Act, Clean Water

Act, etc.). Environmentally sensitive resources include:

(i) Proposed federally listed, threatened, or endangered species or their designated critical habitats.

(ii) Properties listed or eligible for listing on the National Register of Historic Places.

(iii) Areas having special designation or recognition such as prime or unique agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); floodplains; wetlands; sole source aquifers; National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

(iv) Cultural, scientific, or historic resources.

(6) A reasonable likelihood of dividing or disrupting an established community or planned development.

(7) A reasonable likelihood of causing a substantial increase in surface transportation congestion that will decrease the level of service below acceptable levels.

(8) A reasonable likelihood of adversely impacting air quality, exceeding, or violating Federal, State, local, or Tribal air quality standards under the Clean Air Act, as amended.

(9) A reasonable likelihood of adversely impacting water quality, sole source aquifers, public water supply systems or State, local, or Tribal water quality standards established under the Clean Water Act and the Safe Drinking Water Act.

(10) A reasonable likelihood of effects on the quality of the environment that are highly controversial on environmental grounds. The term "controversial" means a substantial scientific dispute exists as to the size, nature, or effect of the proposed action rather than to the existence of opposition to a proposed action, the effect of which is relatively undisputed.

(11) A reasonable likelihood of a disproportionately high and adverse effect on low income or minority populations.

(12) Limit access to or ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners, or significantly adversely affect the physical integrity of sacred sites.

(13) Unless releases are supported by a biocontrol risk analysis or expert panel recommendation that accompanies the administrative record for the categorical exclusion documentation, the proposed action has a reasonable likelihood of contributing to the introduction, continued existence, or spread of federally recognized noxious weeds or non-native invasive species known to occur in the area; or actions that may promote the introduction, growth, or expansion of the range of noxious weed species.

(14) A greater scope or size than is normal for this category of action.

(15) A reasonable likelihood of degrading already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(16) A precedent (or makes decisions in principle) for future or subsequent actions that have a reasonable likelihood of having a future significant effect.

(17) A reasonable likelihood of:

(i) Releases of petroleum, oils, and lubricants (except from a properly functioning engine or vehicle) or reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification); or

(ii) Where the proposed action requires development or amendment of a Spill Prevention, Control, or Countermeasures Plan.

§ 372.8 Categorical exclusions; conventional measures.

(a) *Overview.* Conventional measures include activities such as identifications; inspections; monitoring, including surveys and surveillance, that does not cause physical alteration of the environment; testing; seizures; quarantines; removals; sanitizing, cleaning and disinfection; inoculations; and animal handling and management employed by agency programs to pursue their missions and functions. Paragraphs (b) through (l) of this section explain and give examples of conventional measures. Such measures may include the use—according to any label instructions or other lawful requirements and consistent with standard, published program practices and precautions—of pesticides, chemicals, drugs, pheromones, contraceptives, or other potentially harmful substances, materials, and target-specific devices or remedies.

(b) *Identifications.* Detection and identification of premises or animals, or identification of organisms, diseases, or species causing damage or harm. These range from biological or physical marking and tracking of animals, to premises identification, and/or the use of other markers such as inert particles in feed and branding. Examples include, but are not limited to:

(1) Commodity labels;

(2) Issuance of a specific identification number;

(3) Animal tags;

(4) Radio transmitters;

(5) Microchips; and

(6) Chemicals (such as tetracycline or rhodamine B ingestion).

(c) *Inspections.* Inspections of articles (including fruits and vegetables) to determine if there are any plant pests present, which could involve cutting fruit for inspection; the physical inspection of animals upon entry into the United States; facility and records inspections; inspections of commodities, facilities, or fields, including paperwork and records, for approval and to assure compliance with regulations and program standards. Inspections usually follow a prescribed protocol and document findings on an inspection report form. Examples include, but are not limited to:

(1) Physical examination of plants, plant products, and animals at the port of entry.

(2) Review of containment facilities.

(3) Review of paperwork and records to assure compliance with program regulations and standards.

(d) *Monitoring, including surveys, surveillance, and trapping, that does not cause physical alteration of the environment.* Surveys include questionnaires to collect information and data to assess a current state or trend in activities, to determine compliance, or to determine whether a pest or disease exists in a specific area. Surveillance includes activities to collect test samples from part or all of the target population using routine collection techniques. Trapping refers to the use of capture devices that are designed to efficiently capture, restrain, or kill targeted individual animals or a group of animals (*e.g.,* fruit flies and other insects, a raccoon, a sounder of feral swine). Capture devices used in trapping are foothold; cage; drive; quick-kill; pit (for insects and some small rodents, reptiles and amphibians); insect and sticky traps; snares and other cable restraints; nets; hands; contained animal drugs (*e.g.,* dart guns, tranquilizer tab devices); and insecticides. Attractants used with some types of trapping are food, odor baits or lures, pheromones, shapes, and colors. Trapping avoids risks to the viability of native nontarget species populations through use of attractants designed for specific target animals, device design and proper application, and device placement. Examples include, but are not limited to:

(1) Collection of biological or environmental samples, such as tissue,

soil, or water samples and samples of fecal matter.

(2) Continual checking, by testing, trapping, or observing for the presence, absence, or prevalence of animals, pests, or disease. Information may be used to support a pest or disease status (such as pest-free or disease-free status).

(3) Surveying and monitoring for disease may or may not require the lethal removal of the animal and can often be conducted using nonlethal methods, such as collection of samples from animals killed or removed for reasons related to disease monitoring (*i.e.,* damage management action addressed in an environmental assessment, or hunter-killed animals).

(4) Randomly selecting animals and obtaining blood samples to survey for disease, or collection of test samples.

(e) *Testing.* The examination or analysis of a collected sample. This activity often occurs in a laboratory, but also includes nonlethal tests that require animal-side or chute-side injection and observation in the field. Testing may require the use of specialized equipment and/or diagnostic test kits. Examples include, but are not limited to, intradermal tuberculosis testing of livestock and germplasm testing of plant material for viral infections.

(f) *Seizures.* Taking possession of conveyances, materials, regulated articles, plants and plant products, animals and animal products, other articles infested with a pest or determined to be diseased or exposed to a disease, a regulated article that is mixed in a commodity, or contaminated shipping material. Examples include, but are not limited to:

(1) Confiscation of a commodity that could be a vector for a plant or animal disease or pest, or an animal or plant determined to be infested, infected, exposed, or not in compliance with APHIS regulations (such as one moved illegally or without proper paperwork).

(2) Seizure of a nonregulated commodity, seed, or propagative material containing regulated genetically engineered material.

(g) *Quarantines.* Actions to restrict or prohibit movement from an area, including the creation, expansion, removal, or modification of quarantines. The establishment of a quarantine can include mitigations to allow for movement of animals or commodities while preventing the spread of the animal or plant pest or disease. These mitigations are evaluated separately from the establishment of the quarantine itself. Examples of quarantines are:

(1) Quarantine of an area in which a pest or disease is known to occur to prevent movement of animals, plants, or other articles whose movement could spread the pest or disease.

(2) Changes in pest or disease status for an area or country, such as expansion or rescission of existing quarantines.

(3) Removal of quarantine restrictions when APHIS determines that it is appropriate to do so.

(h) *Removals.* Relocation or lethal removal of living organisms, or destruction of materials. Examples include, but are not limited to:

(1) Removal of animals in accordance with permits and agreements from the appropriate management agencies, or otherwise in accordance with regulations governing management of a species, for the purpose of approved research studies, surveillance and monitoring, or disease or damage management, or due to pest concerns.

(2) Removal of animals or materials from premises.

(3) Removal of trees or shrubs and plants.

(4) Disposal or destruction of materials for which the Agency has regulatory authority due to, for example, completion of acknowledged or permitted activities, completion of regulated activities, or noncompliance and disposal of animals. This can include disposal of regulated articles (fruits, meat, regulated genetically engineered organisms, etc.) at ports of entry designated by U.S. Customs and Border Protection (CBP).[1] Approved methods of disposal range from burial, feeding to animals, composting, to co-burning for power generation.

(5) Routine disposal of carcasses using other approved methods, such as donation for human consumption, composting, chemical digestion, burial, and incineration.

(6) Depopulation of domestic livestock and captive wildlife due to the presence of an animal disease or the reasonable suspicion of the presence of an animal disease. *Extraordinary circumstance:* An outbreak of a foreign animal disease that would require the depopulation of a large number of animals potentially resulting in substantial or significant adverse impacts on the human environment.

(i) *Sanitizing, cleaning, and disinfection.* Treatment of an infested commodity, cleaning, and disinfection that occurs when a disease is found or there is an emergency disease outbreak, treatment of a regulated article, or treatment for carcass disposal. Examples include, but are not limited to:

(1) Treatment of regulated articles at existing facilities, such as irradiation treatment and methyl bromide special use treatment.

(2) Treatment of a facility, container, or cargo hold at the port of entry to mitigate pest threats.

(3) Cleaning and disinfection of equipment, cages, facilities, or premises.

(4) Treatment of animal carcasses, using methods such as incineration, alkaline digestion, or rendering as a method to devitalize infectious material.

(j) *Inoculations.* Introduction of a pathogen or antigen into a living organism in order to invoke an immune response to treat or prevent a disease. Examples are:

(1) Inoculation or treatment of discrete herds of livestock or wildlife undertaken in contained areas (such as a barn or corral, a zoo, an exhibition, or an aviary).

(2) Use of vaccinations or inoculations including new vaccines (for example, genetically engineered vaccines) and applications of existing vaccines to new species provided that the project is conducted in a controlled and limited manner, and the impacts of the vaccine can be predicted. *Extraordinary circumstance:* A previously licensed or approved biologic has been subsequently shown to be unsafe, or will be used at substantially higher dosage levels or for substantially different applications or circumstances than in the use for which the product was previously approved.

(k) *Animal handling and management.* Nonlethal methods not addressed elsewhere in this part that are used to prevent, monitor for, reduce, or stop disease, damage, or harm caused by animals. Examples include, but are not limited to:

(1) Restraining or handling livestock, poultry, or wildlife to facilitate examination or other activities.

(2) Cultural methods and basic habitat management, such as nonlethal management activities such as removal of food sources, modification of planting systems, modification of animal husbandry practices, water control devices for beaver dams, limited beaver dam removal, and pruning trees.

(3) Site-specific applications of nonlethal wildlife damage management practices, such as frightening devices, exclusion, capture and release, and capture and relocation.

(l) *Recordkeeping and labeling.* Requiring regulated parties to keep records demonstrating compliance with APHIS requirements or to label regulated articles to indicate compliance or set out restrictions on the movement of the article. Examples include, but are not limited to:

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[1] Further information on CBP-approved ports is available on the Internet at *http://www.cbp.gov/contact/ports.*

(1) Records documenting the results of trapping for insects.

(2) Records of the application of treatments.

(3) Labels indicating that the movement of a regulated article to certain areas within the United States is illegal.

(4) Records retained by approved livestock facilities and listed slaughtering or rendering establishments under 9 CFR part 71.

§ 372.9 Categorical exclusions; licensing, permitting, authorization, and approval.

Licensing and permitting refer to the issuance of a license, permit, or authorization to entities including individuals, manufacturers, distributors, agencies, organizations, or universities for field testing, environmental release, or importation or movement of animals; plants; animal, plant, or veterinary biological products; or any other regulated article. Authorization and approval are for an entity to participate in a program or perform an action. Examples of this category of action are:

(a) *Animal health-related.* (1) Approval of interstate movement or importation of animals via regulations or permits. Examples include, but are not limited to:

(i) Use of permits to control the interstate movement of restricted animals, such as issuance of an official document or a State form allowing the movement of restricted animals to a particular destination.

(ii) Use of permits for entry, such as pre-movement authorization for entry of animals into a State from the State animal health official of the State of destination.

(iii) Approval of international movements through the use of import and export health certificates and import or export movement permits.

(iv) Authorization to move animals out of the quarantine or buffer zone for cattle fever ticks by documentation (a State form) that confirms the animals have been inspected and found to be tick-free.

(2) Licensing of swine garbage feeding operations.

(3) Accreditation of private veterinarians.

(4) Approval and permitting of laboratories to conduct official tests.

(5) Approval of identification manufacturers to produce identification, tests, and identification devices.

(6) Listing of slaughter and rendering establishments for surveillance under 9 CFR 71.21.

(7) Approval of herd and premises plans that have environmental or waste management components.

(8) Approval of herd accreditation for tuberculosis or certification for brucellosis to document the herd's freedom from disease.

(9) Funding the depopulation of diseased herds, including indemnity and carcass disposal; authorization and funding of the collection and submission of tissue samples for testing.

(10) Approval of participation in the National Poultry Improvement Plan by issuance of a permanent approval number in accordance with 9 CFR 145.4.

(11) Authorization to ship and field test previously unlicensed veterinary biologics including veterinary biologics containing genetically engineered organisms (such as vector-based vaccines and nucleic-acid based vaccines).

(12) Issuance of a license or permit for previously unlicensed veterinary biologics including veterinary biologics containing genetically engineered organisms (such as vector-based vaccines and nucleic-acid based vaccines).

(13) Issuance of a license, permit, authorization, or approval for uses of pure cultures of organisms (relatively free of extraneous micro-organisms and extraneous material) that are not strains of quarantine concern and occur, or are likely to occur, in a State's environment.

(14) Issuance of permits and approval of facilities to import, transport, introduce, or release live animals and products or byproducts thereof, or other organisms for which proven risk mitigation measures are applied and will require no substantial modification for the specific articles under consideration. This includes importation or interstate movement of meat, milk/milk products, eggs, hides, bones, animal tissue extracts, etc., which present no disease risk or for which there are proven animal disease risk mitigation measures, such as heating, acidification, or standard chemical treatment.

(b) *Plant health-related.* (1) Issuance of permits for the importation or interstate movement of organisms into containment facilities, for the interstate movement of organisms between containment facilities, and continued maintenance and use of these organisms.

(2) Issuance of permits for the use of organisms biologically incapable of persisting in the permitted environment.

(3) Issuance of permits for uses outside of containment that are pure cultures of organisms and that are not strains of quarantine concern and occur or are likely to occur in a State's environment, and issuance of permits for the interstate movement of organisms that occur or are likely to occur in a State's environment.

(4) Issuance of permits or approvals for the importation of articles that are regulated due to plant health concerns, when the permit contains conditions that will mitigate any plant pest risk associated with the articles.

(5) Issuance of certificates or limited permits for the movement of regulated articles from areas quarantined due to plant pests.

(6) Issuance of permits for the importation or interstate movement of regulated noxious weeds and other regulated seeds.

(7) Issuance of permits for prohibited or restricted articles unloaded and landed for immediate transshipment or transportation and exportation.

(c) *Biotechnology-related.* (1) Issuance of permits for the importation, interstate movement, or environmental releases of regulated genetically engineered organisms, provided that confinement measures (the permit conditions or performance measures), such as isolation distances from compatible relatives, control of flowering, or physical barriers, minimize the interaction of the regulated article with the environment. *Extraordinary circumstance:* Uncertainty of confinement measures and the ability of such to prevent the interaction of the regulated genetically engineered organism with the environment.

(2) Extension of nonregulated status under part 340 of this chapter to organisms similar to those already deregulated.

(3) Notifications for environmental release, importation, or interstate movement of regulated genetically engineered organisms.

§ 372.10 Categorical exclusions; research and development and facilities.

(a) *Research and development activities.* Activities limited in magnitude, frequency, and scope that occur in laboratories, facilities, pens, or field sites. Examples are:

(1) Vaccination trials that occur on groups of animals in areas designed to limit interaction with similar animals, or that include other controls needed to mitigate potential risk.

(2) Evaluation of uses for chemicals not specifically listed on the product label, if they are used in a manner designed to limit potential effects to nontarget species.

(3) The development and/or production (including formulation,

packaging or repackaging, movement, and distribution) of articles such as program materials, devices, reagents, and biologics that were approved and/or licensed in accordance with existing regulations, or that are for evaluation in confined animal, plant, or insect populations under conditions that prevent exposure to the general population.

(4) Research using chemicals, management tools, or devices to test the efficacy of methods; new vaccinations not currently approved to test in the natural environment; the use of mechanical devices (such as noise and light deterrence); and existing vaccinations, chemicals, or devices used in a new way on an animal, pest, or disease similar to those on which they have previously been used.

(5) Research related to the development and evaluation of wildlife management tools, such as animal repellents, scare devices, fencing, and pesticides.

(6) Development, production, and release of sterile insects.

(b) *Renovation, improvement, maintenance, and construction of facilities.* Examples are:

(1) Renovation of existing laboratories and other APHIS facilities.

(2) Functional replacement of parts and equipment.

(3) Minor additions to existing APHIS facilities.

(4) Minor excavations of land and repairs to properties.

(5) Construction, expansion, or improvement of a facility if:

(i) The structure and proposed use are in compliance with all Federal, State, Tribal, and local requirements;

(ii) The site and scale of construction are consistent with those of existing adjacent or nearby buildings; and

(iii) The size, purpose and location of the structure is unlikely to have significant environmental consequences or create public controversy.

■ 10. Newly redesignated § 372.11 is revised to read as follows:

§ 372.11 Early planning and consultation for applicants and non-APHIS entities.

Prospective applicants who anticipate the need for approval of proposed activities classified as normally requiring environmental documentation should contact, at their earliest opportunity, APHIS' program staff. APHIS program officials will help them determine the types of environmental analyses or documentation, if any, that need to be prepared and how they may inform decisions. The NEPA documents will incorporate by reference (as required by the CEQ regulations in 40 CFR 1502.21), to the fullest extent practicable, surveys and studies required by other environmental statutes.

■ 11. Newly redesignated § 372.12 is amended as follows:

■ a. By revising the section heading;

■ b. In the paragraph heading for paragraph (a), by removing the words "Major planning" and adding in their place the word "Planning";

■ c. In paragraph (b), introductory text, by adding the words "and environmental assessment process" after the words "environmental impact statement process"; and

■ d. By revising paragraphs (b)(2) and (b)(4).

The revisions read as follows:

§ 372.12 Planning and decision points and public involvement.

* * * * *

(b) * * *

(2) Opportunities for public involvement in the environmental assessment process will be announced in the same fashion as the opportunities for public involvement in the environmental impact statement process.

* * * * *

(4) All environmental documents and comments received will be made available to the public via *Regulations.gov.*

■ 12. Newly redesignated § 372.13 is amended as follows:

■ a. In paragraph (a), introductory text, by adding a new sentence after the end of the first sentence;

■ b. In paragraph (a)(1), by removing the citation "§ 372.8" and adding the citation "§ 372.12" in its place; and

■ c. By revising paragraph (a)(3).

The addition and revision read as follows:

§ 372.13 Processing and use of environmental documents.

(a) * * * This determination is based on information provided in the NEPA document and available in the administrative record.

* * * * *

(3) Changes to environmental assessments and findings of no significant impact that are prompted by comments, new information, or any other source, will normally be announced in the same manner as the notice of availability prior to implementing the proposed action or any alternative. APHIS will mail notice upon request.

* * * * *

■ 13. Newly redesignated § 372.14 is revised as follows:

§ 372.14 Supplementing environmental impact statements.

Once a decision to supplement an environmental impact statement is made, a notice of intent will be published. The administrative record kept in connection with the EIS will thereafter be reopened if the supplemental environmental impact statement is issued after the record of decision is issued. The supplemental document will then be processed in the same fashion (exclusive of scoping) as a draft and a final statement (unless alternative procedures are approved by CEQ) and will become part of the administrative record.

■ 14. A new § 372.15 is added to read as follows:

§ 372.15 Process for rapid response to emergencies.

An emergency exists when immediate threats to human health and safety or immediate threats to sensitive or protected resources require that action be taken in a timeframe that does not allow sufficient time to follow the procedures for environmental review established in the CEQ regulations and the regulations in this part.

(a) When the Administrator or the Administrator's delegated Agency official responsible for environmental review determines that an emergency exists that makes it necessary to take immediate action to prevent imminent damage to public health or safety, or sensitive or protected environmental resources in a timeframe that precludes preparing and completing the usual NEPA review, which is comprised of analysis and documentation, the responsible APHIS official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practicable.

(b) If a proposed emergency action is normally analyzed in an environmental assessment as described in § 372.6 and the nature and scope of proposed emergency actions are such that there is insufficient time to prepare an EA and FONSI before commencing the proposed action, the Administrator shall consult with APHIS' Chief of Environmental and Risk Analysis Services about completing the required NEPA compliance documentation and may authorize alternative arrangements for completing the required NEPA compliance documentation. Any alternative arrangements must be documented and notice of their use provided to CEQ.

(c) APHIS shall immediately inform the CEQ, through APHIS' interagency

NEPA contact, when the proposed action is expected to result in significant environmental effects and there is insufficient time to allow for the preparation of an EIS. APHIS will consult CEQ and request alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11. Such alternative arrangements will apply only to the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with the CEQ regulations and the regulations in this part.

Done in Washington, DC, this 14th day of July 2016.

Edward Avalos,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 2016–17138 Filed 7–19–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2016–BT–TP–0005]

RIN 1904–AD64

Energy Conservation Program: Test Procedures for Certain Categories of General Service Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice of proposed rulemaking (SNOPR) proposes to establish test procedures for certain categories of general service lamps (GSLs) to support the ongoing energy conservation standards rulemaking. Specifically, this rulemaking proposes new test procedures for determining the initial lumen output, input power, lamp efficacy, power factor, and standby mode power of GSLs that are not integrated light-emitting diode (LED) lamps, compact fluorescent lamps (CFLs), or general service incandescent lamps (GSILs). This SNOPR revises the previous proposed test procedures for GSLs by referencing Illuminating Engineering Society (IES) LM–79–08 for the testing of non-integrated LED lamps. The U.S. Department of Energy (DOE) is also proposing to clarify references to the existing lamp test methods and sampling plans for determining the represented values of integrated LED lamps, CFLs, and GSILs.

DATES: DOE will accept comments, data, and information regarding this SNOPR no later than August 19, 2016. See section V, "Public Participation," for details.

ADDRESSES: Any comments submitted must identify the SNOPR for Test Procedures for Certain Categories of General Service Lamps, and provide docket number EERE–2016–BT–TP–0005 and/or regulatory information number (RIN) 1904–AD64. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: GSL2016TP0005@ee.doe.gov.* Include the docket number EERE–2016–BT–TP–0005 and/or RIN 1904–AD64 in the subject line of the message.
3. *Mail:* Ms. Lucy deButts, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Lucy deButts, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this SNOPR, "Public Participation."

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at *https://www.regulations.gov/#!docketDetail;D=EERE-2016-BT-TP-0005.* The docket Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, "Public Participation," for information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Lucy deButts at (202) 287–1604 or by email: *Lucy.deButts@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–1604. Email: *Lucy.deButts@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference into 10 CFR part 430 specific sections of the following industry standards:

(1) IEC 62301 ("IEC 62301–DD"), Household electrical appliances—Measurement of standby power (Edition 2.0, 2011–01).

A copy of IEC 62301–DD may be obtained from the International Electrotechnical Commission, available from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or go to *http://webstore.ansi.org.*

(2) IES LM–9–09 ("IES LM–9–09–DD"), IES Approved Method for the Electrical and Photometric Measurement of Fluorescent Lamps.

(3) IES LM–20–13, IES Approved Method of Photometry of Reflector Type Lamps.

(4) IES LM–45–15, IES Approved Method for the Electrical and Photometric Measurement of General Service Incandescent Filament Lamps.

(5) IES LM–79–08 ("IES LM–79–08–DD"), IES Approved Method for the Electrical and Photometric Measurement of Solid-State Lighting Products.

Copies of IES LM–9–09–DD, IES LM–20–13, IES LM–45–15, and IES LM–79–08–DD can be obtained from Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, NY 10005–4001, or by going to *www.ies.org/store.*

See section IV.M for a further discussion of these standards.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.;* "EPCA" or "the Act") sets forth a variety of provisions designed to improve energy efficiency.[1] Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." These consumer products include general service lamps, the subject of this supplemental notice of proposed rulemaking (SNOPR).

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making representations about the energy use or efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

DOE is developing energy conservation standards for general service lamps (GSLs) and published a notice of proposed rulemaking on March 17, 2016 (March 2016 GSL ECS NOPR). In support of the standards rulemaking, DOE has undertaken several rulemakings to amend existing test procedures and to adopt new test procedures for GSLs. On July 1, 2016, DOE published a final rule adopting test procedures for integrated light-emitting diode (LED) lamps. 81 FR 43404 (July 2016 LED TP final rule). DOE has proposed to amend test procedures for medium base compact fluorescent lamps (MBCFLs) and to adopt test procedures for new metrics for all compact florescent lamps (CFLs) including hybrid CFLs and CFLs with bases other than a medium screw base. 80 FR 45724 (July 31, 2015) (July 2015 CFL TP NOPR).

On March 17, 2016, DOE published a NOPR (March 2016 GSL TP NOPR) that proposed test procedures for certain categories of GSLs not currently covered under these existing test procedures. 81 FR 14632. This SNOPR revises the test procedures proposed in the March 2016 GSL TP NOPR by referencing Illuminating Engineering Society (IES) LM–79–08 for the testing of non-integrated LED lamps. Manufacturers of lamps subject to this rulemaking would be required to use these test procedures to assess performance relative to any potential energy conservation standards the lamps must comply with in the future and for any representations of energy efficiency.

EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Pursuant to this authority, DOE proposes to prescribe test procedures for certain categories of GSLs in support of the GSL standards rulemaking.

II. Synopsis of the Supplemental Notice of Proposed Rulemaking

In this SNOPR, DOE proposes test procedures for determining initial lumen output, input power, lamp efficacy, power factor, and standby mode power for certain categories of GSLs for which DOE does not have an existing regulatory test procedure. Based on public comment received in response to the March 2016 GSL TP NOPR, DOE proposes to reference IES LM–79–08 for the testing of non-integrated LED lamps. DOE's proposals for the standby mode test procedure, represented value calculations, and certification and rounding requirements remain unchanged from the March 2016 GSL TP NOPR. DOE also notes that representations of energy use or energy efficiency must be based on testing in accordance with this rulemaking, if adopted, beginning 180 days after the publication of a test procedure final rule.

III. Discussion

A. Scope of Applicability

GSL is defined by EPCA to include GSILs, CFLs, general service light-emitting diode (LED) lamps (including organic LEDs (OLEDs)), and any other lamp that DOE determines is used to satisfy lighting applications traditionally served by GSILs. (42 U.S.C. 6291(30)(BB)) In the March 2016 GSL ECS NOPR, DOE proposed to include in the definition for general service lamp a lamp that has an ANSI[2] base, operates at any voltage, has an initial lumen output of 310 lumens or greater (or 232 lumens or greater for modified spectrum GSILs), is not a light fixture, is not an LED downlight retrofit kit, and is used in general lighting applications.[3] 81 FR 14541. This SNOPR proposes test procedures for GSLs that are not GSILs, CFLs, or integrated LED lamps.

DOE received comments from China[4] regarding the scope of applicability of this rulemaking. China noted that OLED lamps are classified as general service lamps and would be subject to the test procedures proposed in the March 2016 GSL TP NOPR. China commented that OLED lamps are unique from existing lighting technologies, and that International Commission on Illumination (CIE) and related researchers are considering developing a specialized test method for OLED lamps. China therefore suggested that DOE develop specific regulations and test procedures for OLED lamps instead of using existing LED lamp test procedures. (China, No. 8 at p. 1)[5]

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[1] All references to EPCA refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

[2] A lamp base standardized by the American National Standards Institute.

[3] The definition also specified several exemptions, including: General service fluorescent lamps; incandescent reflector lamps; mercury vapor lamps; appliance lamps; black light lamps; bug lamps; colored lamps; infrared lamps; marine signal lamps; mine service lamps; plant light lamps; sign service lamps; traffic signal lamps; and medium screw base incandescent lamps that are left-hand thread lamps, marine lamps, reflector lamps, rough service lamps, shatter-resistant lamps (including a shatter-proof lamp and a shatter-protected lamp), silver bowl lamps, showcase lamps, 3-way incandescent lamps, vibration service lamps, G shape lamps as defined in ANSI C78.20 and ANSI C79.1–2002 with a diameter of 5 inches or more, T shape lamps as defined in ANSI C78.20 and ANSI C79.1–2002 and that use not more than 40 watts or have a length of more than 10 inches, and B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamps as defined in ANSI C79.1–2002 and ANSI C78.20 of 40 watts or less.

[4] DOE received two comments from China, both of which provided essentially the same comments regarding the March 2016 GSL TP NOPR. (EERE–BT–TP–0005–008 and EERE–BT–TP–0005–0009) For the purpose of this SNOPR, DOE provides reference to the first comment submitted by China.

DOE understands that the current industry practice is to test OLED lamps according to IES LM–79–08, a test standard that is applicable to solid-state lighting products, including both LED and OLED lamps. In this SNOPR, DOE proposes to reference LM–79–08 to determine initial lumen output, input power, lamp efficacy, and power factor for OLED lamps. If a new test procedure is developed by industry members and/or related researchers, DOE will consider it in a future revision of this test procedure.

China commented that in section III.A of the March 2016 GSL TP NOPR, DOE referred to its proposed definition of a GSL from the March 2016 GSL ECS NOPR, which includes lamps with an initial lumen output of 310 lumens or greater. China noted that in Energy Star Lamps Specification V2.0, the lumen range of products used to replace a 25 watt (W) incandescent lamp is between 250 and 449 lumens. China stated that the difference between the proposed definition of GSL in the March 2016 GSL ECS NOPR and the products covered in the Energy Star Lamps Specification V2.0 would cause confusion on how to test lamps with lumen outputs less than 310 lumens. Therefore, China suggested that DOE clarify the test requirements for lamps below 310 lumens. (China, No. 8 at p. 1)

DOE notes that this SNOPR proposes test procedures for GSLs that are not GSILs, CFLs, or integrated LED lamps. The March 2016 GSL ECS NOPR proposed a definition of GSL that would be limited to products with a lumen output of 310 lumens or greater (or 232 lumens or greater for modified spectrum general service incandescent lamps). 81 at FR 14628. DOE recognizes that ENERGY STAR Lamps Specification V2.0 includes products with a lumen output of less than 310 lumens. To determine how such lamps should be evaluated under ENERGY STAR Lamps Specification V2.0, interested parties will need to consult the ENERGY STAR document.

China commented that, while section III.B of the March 2016 GSL TP NOPR stated that the term GSL includes many types of lamps using varying lighting technologies, it understood from the discussion in section III.A that halogen lamps were excluded from the definition of GSL. China requested clarification on whether the proposed rule would cover halogen lamps. (China, No. 8 at p. 1)

As noted in this preamble, a definition of GSL was proposed in the March 2016 GSL ECS NOPR, and that proposed definition does not exclude halogen lamps generally. This SNOPR proposes test procedures for other incandescent lamps, *i.e.*, incandescent lamps that are GSLs but not GSILs. "Incandescent lamp" is currently defined, in part, as a lamp in which light is produced by a filament heated to incandescence by an electric current. 10 CFR 430.2. This description depicts the method of producing light in a halogen lamp. In addition, paragraph (1) of the definition of "incandescent lamp" in 10 CFR 430.2 expressly includes tungsten halogen lamps. A halogen lamp (other than a halogen lamp that was a GSIL) within the definition of GSL as adopted in the energy conservation standards final rule would be subject to the test procedures proposed in this SNOPR if adopted. Test procedures for GSILs are located in appendix R to subpart B of part 430.

China commented that section III.B of March 2016 GSL TP NOPR did not provide definitions for the eight general purpose lamps mentioned in Table III.1, making it difficult to distinguish between "other non-incandescent reflector type," "general purpose incandescent," "compact fluorescent lamps," and "other types of fluorescent lamps." China recommended that DOE use IEC 61231, which it stated is internationally accepted for classifying the types of lamps mentioned in Table III.1 of the March 2016 GSL TP NOPR. (China, No. 8 at pp. 1–2)

Table III.1 of the March 2016 GSL TP NOPR referenced the test procedures that would be applicable to GSLs based on lamp technology: GSILs, CFLs, integrated LED lamps, other incandescent lamps that are not reflector lamps, other incandescent lamps that are reflector lamps, other fluorescent lamps, OLED lamps, and non-integrated LED lamps. 81 FR 14634. DOE notes that definitions for many of these lamp types either already exist in 10 CFR 430.2 or were proposed in the March 2016 GSL ECS NOPR. GSIL is currently defined at 10 CFR 430.2. A definition of CFL was proposed to be added to 10 CFR 430.2 in the July 2015 CFL TP NOPR. 80 FR at 45739. A definition of integrated LED lamp was recently added to 10 CFR 430.2 in the July 2016 LED TP final rule. 81 FR at 43426. The references to "other incandescent lamps" in Table III.1 were to lamps that meet the definition of GSL (as would be established in a GSL standards final rule) that are incandescent lamps other than GSILs. A definition of "reflector lamp" has been proposed in the March 2016 GSL ECS NOPR. 81 FR 14629. Regarding fluorescent lamps, reference to "other fluorescent lamps" in Table III.1 of the March 2016 GSL TP NOPR was to fluorescent lamps that meet the definition of GSL (to be finalized in the standards final rule) but do not meet the definition of CFL (which is another lamp type specifically included in the GSL term) or general service fluorescent lamp (which is a lamp type specifically *excluded* from the GSL term). DOE has proposed definitions for non-integrated lamp and OLED lamp in the March 2016 GSL ECS NOPR. 81 FR 14628–14629. Thus, DOE has tentatively determined that all of the various kinds of lamps included in this rulemaking have either existing or proposed definitions that sufficiently identify which test procedures are applicable to each kind of lamp.

China commented that section III.B of the March 2016 GSL TP NOPR includes integrated and non-integrated LEDs, with corresponding test procedures. China pointed out that IEC 62838:2015 includes semi-integrated LEDs as well. China recommended that DOE include semi-integrated LEDs and their corresponding referenced test procedure. (China, No. 8 at p. 2) DOE notes that it has proposed definitions for integrated and non-integrated lamps in the March 2016 GSL ECS NOPR. 81 FR 14628. Under the proposed definitions of integrated lamp and non-integrated lamp, semi-integrated LEDs would be considered a type of non-integrated lamp because, as described in IEC 62838:2015, they require the use of some external components.

China commented that section III.B of the March 2016 GSL TP NOPR referenced the integrated LED lamp test procedure in appendix BB of 10 CFR part 430 subpart B. However, China noted that this appendix is not yet published. China recommended that DOE publish the documents corresponding to this appendix. (China, No. 8 at p. 2) DOE notes that appendix BB of 10 CFR part 430 subpart B, containing the integrated LED test procedure, was adopted in the July 2016 LED TP final rule. 81 FR at 43427–43428.

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[5] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop test procedures for GSLs (Docket No. EERE–2016–BT–TP–0005), which is maintained at *www.regulations.gov*. This notation indicates that the statement preceding the reference was made by China, is from document number 8 in the docket, and appears at page 1 of that document.

B. Proposed Method for Determining Initial Lumen Output, Input Power, Lamp Efficacy, and Power Factor

As described in section III.A, both the statutory definition and proposed regulatory definition of GSL cover many types of lamps using a variety of lighting technologies. For several of the included lamp types, energy conservation standards and test procedures already exist. GSILs are required to comply with the energy conservation standards in 10 CFR 430.32(x), and test procedures for these lamps are in Appendix R to subpart B of 10 CFR part 430. In a separate test procedure rulemaking, DOE has proposed to amend the test procedures for MBCFLs and to establish new test procedures for all other CFLs. 80 FR 45724. Once finalized, the updated and new test procedures will appear at appendix W to subpart B of 10 CFR part 430. In addition, DOE recently issued test procedures for integrated LED lamps. 81 FR 43404. Although integrated LED lamps are not currently required to comply with energy conservation standards, DOE has proposed standards for them in the March 2016 GSL ECS NOPR. 81 FR 14530. The test procedures for integrated LED lamps will be located in new appendix BB to subpart B of 10 CFR part 430.

If DOE test procedures already exist or were proposed in an ongoing rulemaking (such as for GSILs, CFLs, and integrated LED lamps), DOE proposed in the March 2016 GSL TP NOPR to reference those specific provisions in the GSL test procedures. For all other GSLs, DOE proposed new test procedures, intending to reference the most recently published versions of relevant industry standards. 81 FR 14631, 14633. Of the proposed test procedures, DOE received comments on those for non-integrated LED lamps, other fluorescent lamps, and other incandescent lamps that are reflector lamps.

DOE received comments from three stakeholders regarding the proposed test procedures for non-integrated LED lamps. Private citizen Mat Roundy voiced support for DOE's proposed reference of CIE S 025/E:2015, stating that requiring manufacturers to use the same standard would improve effectiveness when implementing an energy conservation standard and promoting energy efficiency. (Roundy, No. 5 at p. 1) However, Osram Sylvania, Inc. (OSI) and the National Electrical Manufacturers Association (NEMA) commented that, although non-integrated LED lamps are not within the intended scope of IES LM–79–08, it is common industry practice to use IES LM–79–08 to test non-integrated LED lamps. NEMA and OSI both noted that the test procedure for ceiling fan light kits in appendix V1 to subpart B of 10 CFR 430 directs manufacturers to test other solid-state lighting (SSL) products using IES LM–79–08. NEMA and OSI therefore recommended that DOE allow manufacturers flexibility in choosing the test procedure for non-integrated lamps LED lamps. (OSI, No. 3 at p. 2; NEMA, No. 6 at p. 2)

In proposing test procedures for non-integrated LED lamps in the March 2016 GSL TP NOPR, DOE reviewed existing industry standards. In its review DOE initially determined that IES LM–79–08 was not intended for non-integrated LED lamps given that LM–79–08 states in section 1.1 that the test method covers "LED-based SSL products with control electronics and heat sinks incorporated, that is, those devices that require only AC mains power or a DC voltage power supply to operate." Non-integrated LED lamps require external electronics; that is, the lamps are intended to connect to ballasts/drivers rather than directly to the branch circuit through an ANSI base and corresponding ANSI standard lamp holder (socket). Because non-integrated LED lamps require external electronics, DOE tentatively determined that IES LM–79–08 was not appropriate for non-integrated LED lamps, and therefore would not be the most relevant industry standard for these lamps.

Based on the comments received from NEMA and OSI, DOE investigated whether IES LM–79–08 is the more relevant test procedure for non-integrated LED lamps, regardless of the defined scope of the industry standard. In addition to the statements made by NEMA and OSI that IES LM–79–08 is relied upon by industry to test non-integrated lamps, DOE found one manufacturer of these products that states on its Web site that the performance specifications it reports are based on testing according to IES LM–79–08.[6] Other manufacturers did not identify the test method used. DOE also contacted independent test laboratories to determine which test procedure they used. DOE found that the laboratories generally used IES LM–79–08 when testing non-integrated LED lamps because, even though it does not specifically include them, the laboratories view IES LM–79–08 as the most applicable industry standard. DOE preliminarily concluded that once it is determined how to supply the power to the lamp or on which ballast/driver to operate the lamp for testing, there is little difference in testing an integrated versus a non-integrated LED lamp. Further, DOE notes that some of these products have been tested and the results have been reported in the LED Lighting Facts Database and the qualified products list for the Lighting Design Lab. Both of these organizations specify IES LM–79–08 as a test method for all included products.

Upon reviewing the available information, DOE has tentatively determined that for the testing of non-integrated LED lamps, IES LM–79–08 is the more relevant industry standard at the present time, as compared to CIE S 025/E:2015. Further, DOE has reviewed IES LM–79–08 and finds it appropriate for testing non-integrated LED lamps for the purpose of determining compliance with the applicable energy efficiency standards.

However, because non-integrated LED lamps are not included in the applicable scope of this industry standard, DOE finds that additional instruction is necessary to ensure consistent and repeatable results. Specifically, DOE finds that IES LM–79–08 provides no information on which external ballast/driver or power supply to use for testing. After reviewing the approaches of independent test laboratories, DOE proposes that non-integrated LED lamps be tested according to IES LM–79–08, using the manufacturer-declared input voltage and current as the power supply. These quantities are typically not reported on the product packaging or in manufacturer literature. (DOE noted only two companies that do so.) DOE is therefore proposing to revise the requirements for certification reports to include these quantities for non-integrated LED lamps. While manufacturers usually list compatible ballasts/drivers for these products, DOE notes that it is unknown on which ballast/driver these lamps may operate when installed in the field. Furthermore, the test procedure should produce consistent and repeatable results. By requiring these lamps to be tested using the manufacturer-declared input voltage and current as the power supply, DOE's proposed approach is consistent with the industry practice of using reference ballasts for non-integrated lamps, such as non-integrated CFLs and GSFLs. For those products, industry standards (and DOE's test procedures) specify electrical settings for reference ballasts and each product is tested using those same settings.

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[6] *http://www.maxlite.com/item/lm79?=13PLG24QVLED27.*

Because industry has not yet developed reference ballast/driver settings for non-integrated LED lamps, DOE proposes that the manufacturers report the settings that are used. The use of reference settings allows for a consistent and comparable assessment of the lamp's performance. Therefore, DOE proposes the requirement that non-integrated LED lamps be tested according to IES LM–79–08, using the manufacturer-declared input voltage and current as the power supply. DOE requests DOE requests comment on the appropriateness of referencing IES LM–79–08 for the testing of non-integrated LED lamps. DOE also requests comment on the proposed requirement that manufacturers report the settings used for testing, specifically input voltage and current, and whether additional settings are needed to ensure consistent, repeatable results. Finally, DOE requests comment on whether the manufacturer-declared settings should be made available to the public so that accurate comparisons across products could be made.

Regarding the testing of other fluorescent lamps, OSI and NEMA commented that testing per sections 4 through 6 of IES LM–9–09 would be appropriate for double-ended fluorescent lamps, but questioned whether double-ended fluorescent lamps would be subject to the test procedures as these lamps would likely be considered general service fluorescent lamps, a type of lamp excluded from the definition of GSL. OSI suggested that sections 4 through 6 of IES LM–66–14 would be more applicable to cite as the test procedure for "other fluorescent lamps." Specifically, OSI stated that IES LM–66–14 was the appropriate industry standard to reference for the commercially available induction lamps meeting the definition of GSL. (OSI, No. 3 at p. 2; NEMA, No. 6 at p. 3)

DOE has proposed to define compact fluorescent lamp as an integrated or non-integrated single-base, low-pressure mercury, electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light; the term does not include circline or U shaped fluorescent lamps. 80 FR at 45739. This proposed definition of CFL aligns with the scope of IES LM–66–14, which states that it describes test procedures for obtaining measurements of single-based fluorescent lamps, including both electrode and electrodeless (*i.e.,* induction) versions. The introduction of IES LM–66–14 states, as does DOE's definition of CFL, that it does not include circline or U-shaped fluorescent lamps. Thus, DOE has tentatively concluded that lamps meeting DOE's definition of CFL will be required to use test procedures in appendix W to subpart B of 10 CFR 430, which predominantly references IES LM–66–14 for test methods. DOE expects that single-based fluorescent lamps that are GSLs will be within the definition of CFL, and thus subject to the test procedures that reference IES LM–66–14.

While DOE is unaware of any lamps currently on the market that would be subject to testing as "other fluorescent lamps," test procedures must be established for all potentially covered products. To address other fluorescent lamps that would not meet the definition of CFL but would otherwise be defined as GSLs (*i.e.,* double-ended fluorescent lamps), DOE has maintained the reference to IES LM–9–09 in this SNOPR.

OSI and NEMA supported the use of IES LM–20–13 for other incandescent lamps that are reflector lamps, but disagreed with referencing sections 4 through 8, especially section 7, as well as the lack of specific instructions to deviate from IES LM–20–13. OSI and NEMA noted that the March 2016 GSL ECS NOPR did not propose any requirements for beam angle, beam lumens, center beam candlepower, or beam pattern classification (the lamp characteristics measured under the test procedures in section 7 of IES LM–20–13) and thus recommended omitting reference to this section. NEMA also expressed confusion regarding DOE's inclusion of section 7, wondering whether its inclusion was an indication that goniophotometer systems may be allowed to measure luminous flux. NEMA recommended instead that DOE reference Appendix R to subpart B of 10 CFR 430 (test procedures for incandescent reflector lamps) for the testing of other incandescent lamps that are reflector lamps. (NEMA, No. 6 at p. 3)

For this SNOPR, DOE again reviewed the referenced sections (*i.e.,* sections 4 through 8) of IES LM–20–13. DOE agrees that referencing section 7 of LM–20–13 is unnecessary because it addresses the measurement of values for which standards have not been proposed, such as beam angle, field angle, and beam flux values. Furthermore, section 7 specifies the use of a goniophotometer. As proposed in the March 2016 GSL TP NOPR and maintained in this document, the active mode test procedure does not allow the use of a goniophotometer. For these reasons, the reference to section 7 of IES LM–20–13 has been removed from the test procedure in this SNOPR.

DOE has determined not to reference appendix R for the testing of other incandescent lamps that are reflector lamps. DOE notes that the content of the referenced sections (sections 4, 5, 6, and 8) of IES LM–20–13 are consistent with the content of the sections of IES LM–20–94 referenced in appendix R. However, DOE has chosen not to reference Appendix R in order to avoid potential confusion; appendix R is applicable to incandescent reflector lamps but these lamps are not included in the definition of GSL. Therefore, for GSLs that are other incandescent lamps that are reflector lamps, DOE proposes referencing sections 4, 5, 6, and 8 of IES LM–20–13.

DOE did not receive any comments on referring to appendix R for general service incandescent lamps, to Appendix BB for integrated LED lamps, to IES LM–45–15 for other incandescent lamps that are not reflector lamps, or to IES LM–79–08 for OLED lamps. DOE did, however, review all references to industry standards to ensure that only necessary sections were referenced, as described in the previous paragraph. DOE removed all references to sections describing luminous intensity and/or color measurements as these are not necessary for the metrics covered by the test procedure. DOE also made references to IES LM–79–08 consistent with sections referenced in the July 2016 LED TP final rule; that is, DOE added a reference to section 1.3 (Nomenclature and Definitions) and removed the reference to section 6.0 (Operating Orientation). DOE instead specifies the appropriate operating orientation directly in appendix DD. DOE requests comment on the industry standards and sections of the industry standards referenced.

TABLE III.1—TEST PROCEDURES FOR GENERAL SERVICE LAMPS

Lamp type	Referenced test procedure
General service incandescent lamps	Appendix R to Subpart B of 10 CFR 430.
Compact fluorescent lamps	Appendix W to Subpart B of 10 CFR part 430.

TABLE III.1—TEST PROCEDURES FOR GENERAL SERVICE LAMPS—Continued

Lamp type	Referenced test procedure
Integrated LED lamps	Appendix BB to Subpart B of 10 CFR part 430.
Other incandescent lamps that are not reflector lamps	IES LM–45–15, sections 4–6, and section 7.1.
Other incandescent lamps that are reflector lamps	IES LM–20–13, sections 4–6, and section 8.
Other fluorescent lamps	IES LM–9–09, sections 4–6, and section 7.5.
OLED lamps	IES LM–79–08, sections 1.3 (except 1.3[f]), 2.0, 3.0, 5.0, 7.0, 8.0, 9.1 and 9.2.
Non-integrated LED lamps	IES LM–79–08, sections 1.3 (except 1.3[f]), 2.0, 3.0, 5.0, 7.0, 8.0, 9.1 and 9.2.

C. Laboratory Accreditation

In the March 2016 GSL TP NOPR, DOE proposed to require that testing of initial lumen output, input power, lamp efficacy, power factor, and standby mode power (if applicable) for GSLs be conducted by test laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) or an accrediting organization recognized by the International Laboratory Accreditation Cooperation (ILAC). DOE tentatively determined that since NVLAP is a member of ILAC, test data collected by any laboratory accredited by an accrediting body recognized by ILAC would be acceptable. 81 FR 14634. DOE noted that under existing test procedure regulations, testing for other regulated lighting products (such as general service fluorescent lamps, incandescent reflector lamps, and fluorescent lamp ballasts), in addition to general service lamps that must already comply with energy conservation standards (such as general service incandescent lamps and medium base compact fluorescent lamps), must be conducted in a similarly accredited facility. 10 CFR 430.25.

DOE received several comments regarding lab accreditation. OSI and NEMA disagreed with what they understood to be DOE's shift from the use of test laboratories accredited by NVLAP or an accrediting organization recognized by NVLAP, to test laboratories accredited by an Accreditation Body that is a signatory member to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). Citing to a 2013 version of the regulations, NEMA commented that the March 2016 GSL TP NOPR did not adequately explain why the non-GSL portions of the existing regulation needed to be changed. (NEMA, No. 6 at p. 3)

The comments received suggest that some commenters may not be familiar with the current regulatory text with regard to requirements for test laboratories. DOE notes that it did not propose to change the existing regulation as it relates to non-GSLs, but simply to include the testing of GSLs in the existing regulatory provision. The existing text in 10 CFR 430.25 states that the enumerated lamp types, including general service fluorescent lamps and incandescent reflector lamps (which are not general service lamps), must be tested by laboratories accredited by "an Accreditation Body that is a signatory member to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA)." The discussion regarding NVLAP in the preamble to the 2016 March GSL TP NOPR was intended to clarify that testing could be conducted by a test laboratory accredited by NVLAP given that NVLAP is a signatory member to the ILAC MRA. 81 FR 14634.

TÜV SÜD commented that the proposed language for § 429.57(b)6, which requires each test report to include an NVLAP identification number or other NVLAP-approved identification, contradicts § 430.25, which requires testing to be performed in a laboratory accredited by an ILAC member. TÜV SÜD elaborated that this prevents laboratories accredited by, for example, SCC (Canada) or DAkks (Germany) from issuing a report with an NVLAP identification number unless it has another accreditation with NVLAP. TÜV SÜD recommended that DOE update the relevant portion of § 429.57(b)6 to read, ". . . ILAC's accreditation bodies identification number or other ILAC accreditation bodies—approved identification . . ." (TÜV SÜD, No. 2 at p. 1) DOE agrees with this comment and is proposing to update the language in § 429.57(b) to be consistent with § 430.25 and to include the recommended text. Similarly, DOE also proposes to update §§ 429.27(b) and 429.35(b) to be consistent with § 430.25.

UL commented that luminous efficacy results from lamp testing can range from +25% to −25% due to variations in laboratory accuracy and precision, which represents a significant range in the context of the efficacy levels proposed in the March 2016 GSL ECS NOPR. UL further commented that NVLAP accreditation is an accepted means to minimize variability between different labs. UL noted that NVLAP is an ILAC member, but NVLAP also requires participation in the National Institute of Standards and Technology (NIST) proficiency-testing program for SSL, which assists labs in improving and maintaining measurement accuracy and precision. UL recommended that DOE require any lab accredited by an ILAC member, other than NVLAP, to participate in the NIST SSL proficiency program. UL noted that this has been a requirement of the ENERGY STAR SSL program for many years. (UL, No. 4 at p. 2)

DOE notes that ISO/IEC 17025 states that a laboratory shall have quality control procedures for monitoring the validity of tests and calibrations undertaken.[7] This monitoring may include the participation in inter-laboratory comparisons or proficiency testing programs. Other means may include the regular use of reference materials, or replicate tests or calibrations using the same or different methods. By these mechanisms a laboratory can provide evidence of its competence to its clients, parties and accreditation bodies. Participation in proficiency testing is not required to become an ILAC signatory. However, ILAC and many of the accreditation bodies that are signatories of the MRA encourage participation in proficiency testing or inter-laboratory comparisons.[8] Therefore, DOE has tentatively concluded that requiring participation in proficiency testing is unnecessary, as the accreditation process is designed to ensure the competency of the testing laboratory through a variety of mechanisms.

NEMA recommended not deleting references to other products and applicable test methods, such as the following quoted portion: "The testing for general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps shall be performed in accordance with Appendix R to this subpart. The testing for medium base compact fluorescent lamps shall be performed in accordance with appendix W of this subpart.'' (NEMA, No. 6 at p. 3)

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[7] *http://ilac.org/news/ilac-p9062014-published/.*

[8] *http://ilac.org/ilac-mra-and-signatories/purpose/.*

It appears that in its comments NEMA is referencing a prior version of 10 CFR 430.25. An amendment was made to 10 CFR 430.25 on June 5, 2015. 80 FR 31982. DOE notes that the text cited by NEMA does not currently exist in 10 CFR 430.25 and that the testing provisions are specified in 10 CFR 430.23.

D. Effective Date and Compliance Dates

DOE received comments regarding the compliance date proposed in the March 2016 GSL TP NOPR. OSI and NEMA commented that the 180-day compliance date places an undue burden on manufacturers. OSI and NEMA commented that until there is a need to comply with an efficacy standard, mandatory testing in CIE S 025 accredited laboratories would be an excessive requirement. NEMA commented that this burden is exacerbated given that many of the products proposed to be tested to CIE S 025 will likely not be compliant with 2020 standards and thus will cease manufacture and sales, causing a lost certification/accreditation investment. (OSI, No. 3 at pp. 3–4; NEMA, No. 6 at pp. 3–4)

As discussed in section III.B, DOE is not incorporating CIE S 025 by reference and therefore tentatively concludes that the compliance date will not introduce unnecessary burden. As noted previously, the referenced industry standard, IES LM–79–08, represents common industry practice for testing non-integrated LED lamps.

If adopted, the test procedures proposed in this SNOPR for GSLs that are not integrated LED lamps, CFLs, or GSILs, would be effective 30 days after publication in the **Federal Register** (referred to as the ''effective date''). Pursuant to EPCA, manufacturers of covered products would be required to use the applicable test procedure as the basis for determining that their products comply with the applicable energy conservation standards. (42 U.S.C. 6295(s)) On or after 180 days after publication of a final rule, any representations made with respect to the energy use or efficiency of GSLs that are not integrated LED lamps, CFLs, and GSILs would be required to be made in accordance with the results of testing pursuant to the new test procedures. (42 U.S.C. 6293(c)(2))

DOE proposes that after the effective date and prior to the compliance date of a GSL test procedure final rule, manufacturers may voluntarily begin to make representations with respect to the energy use or efficiency of GSLs that are not integrated LED lamps, CFLs, and GSILs and when doing so must use the results of testing pursuant to that final rule.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed the test procedures for GSLs proposed in this SNOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth in the following paragraphs.

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). Manufacturing of GSLs is classified under NAICS 335110, ''Electric Lamp Bulb and Part Manufacturing.'' The SBA sets a threshold of 1,250 employees or less for an entity to be considered as a small business for this category.

In the March 2016 GSL TP NOPR, to estimate the number of companies that could be small businesses that sell GSLs, DOE conducted a market survey using publicly available information. DOE's research involved information provided by trade associations (*e.g.,* the National Electrical Manufacturers' Association) and information from DOE's Compliance Certification Management System (CCMS) Database, the Environmental Protection Agency's ENERGY STAR Certified Light Bulbs Database, LED Lighting Facts Database, previous rulemakings, individual company Web sites, SBA's database, and market research tools (*e.g.,* Hoover's reports). DOE screened out companies that did not meet the definition of a ''small business'' or are completely foreign owned and operated. DOE identified approximately 118 small businesses that sell GSLs in the United States. 81 FR 14635.

For this SNOPR, DOE reviewed its estimated number of small businesses. DOE updated its list of small businesses by revisiting the information sources described in this preamble. DOE screened out companies that do not meet the definition of a ''small business,'' or are completely foreign owned and operated. DOE determined that nine companies are small businesses that maintain domestic production facilities for general service lamps.

In the March 2016 GSL TP NOPR, DOE proposed test procedures for determining initial lumen output, input power, lamp efficacy, power factor, and standby power of GSLs. DOE noted that several of the lamp types included in the definition of general service lamp must already comply with energy conservation standards and therefore test procedures already existed for these lamps. If DOE test procedures already existed or were proposed in an ongoing rulemaking (such as for general service incandescent lamps, compact fluorescent lamps, and integrated LED lamps), DOE proposed to reference them directly. For all other general service lamps, DOE proposed new test procedures in the March 2016 GSL TP NOPR. For the new test procedures, DOE proposed to reference the most recent versions of relevant industry standards.

DOE estimated the testing costs and burden associated with conducting testing according to the new test procedures proposed in the March 2016 GSL TP NOPR for general service lamps. DOE did not consider the costs and burdens associated with DOE test procedures that already exist or that have been proposed in other ongoing rulemakings because these have been or are being addressed separately. DOE also assessed elements (testing methodology, testing times, and sample size) in the proposed CFL and integrated LED lamp test procedures that could affect costs associated with complying with this rule. Except for lab accreditation costs associated with CIE S 025/E:2015, which has been replaced with IES LM–79–08, the cost estimates of this SNOPR are the same as those determined under the March 2016 GSL TP NOPR. The following is an analysis of both in-house and third party testing costs associated with this rulemaking.

In the March 2016 GSL TP NOPR, DOE estimated that the labor costs associated with conducting in-house testing of initial lumen output, input power, and standby mode power were $41.68 per hour. DOE determined that calculating efficacy and power factor of a GSL would not result in any incremental testing burden beyond the cost of conducting the initial lumen output and input power testing. The cost of labor was then calculated by multiplying the estimated hours of labor by the hourly labor rate. For lamps not capable of operating in standby mode, DOE estimated that testing in-house in accordance with the appropriate proposed test procedure would require, at most, four hours per lamp by an electrical engineering technician. For lamps capable of operating in standby mode, DOE estimated that testing time would increase to five hours per lamp due to the additional standby mode power consumption test. DOE noted that these estimates are representative of the time it would take to test the most labor intensive technology, LED lamps. In total, DOE estimated that using the test method prescribed in the March 2016 GSL TP NOPR to determine initial light output and input power would result in an estimated labor burden of $1,670 per basic model of certain GSLs and $2,080 per basic model of certain GSLs that can operate in standby mode.

Because accreditation bodies[9] impose a variety of fees during the accreditation process, including fixed administrative fees, variable assessment fees, and proficiency testing fees, DOE included as an example the costs associated with maintaining a NVLAP-accredited facility or a facility accredited by an organization recognized by NVLAP in the March 2016 GSL TP NOPR. In the first year, for manufacturers without NVLAP accreditation who choose to test in-house, DOE estimated manufacturers on average would experience a maximum total cost burden of about $2,210 per basic model tested or $2,630 per basic model with standby mode power consumption testing.[10]

Additionally, DOE requested pricing from independent testing laboratories for testing GSLs. DOE estimated the cost for testing at an independent laboratory to be up to $1,070 per basic model. This estimate included the cost of accreditation as quotes were obtained from accredited laboratories.

DOE received comments from NEMA and OSI regarding the burden of testing non-integrated LED lamps in laboratories accredited to CIE standard CIE S 025/E:2015. NEMA and OSI commented that the small product sector of non-integrated LED lamps did not justify accrediting a lab to the CIE standard for such limited testing needs. (OSI, No. 3 at p. 2; NEMA, No. 6 at p. 2) They noted that the test facilities generally used by the lighting industry are not accredited for this referenced CIE test method, and would need to obtain and maintain this accreditation. OSI and NEMA commented that certifying a lab to CIE S 025 could cost approximately $10,000.00, which would be burdensome for all labs, regardless of size. OSI and NEMA noted that the current cost for CIE S 025/E:2015 is $241.00, compared to $25.00 for IES LM–79–08. OSI and NEMA further stated that the cost of the normative standards associated with CIE S 025/E:2015 must also be considered, including CIE 84–1989, which costs €98.46 and is not currently available from familiar sources. OSI and NEMA believe these costs could be burdensome for a small manufacturer. (OSI, No. 3 at pp. 3–4; NEMA, No. 6 at pp. 3–4)

As discussed in section III.B, DOE is no longer referencing CIE S 025 to test non-integrated LED lamps. Instead, DOE proposes to reference IES LM–79–08 which is also referenced for the testing of integrated LED lamps and OLED lamps. Because labs are already required to be accredited to IES LM–79–08 for testing integrated LED lamps per DOE's test procedure in Appendix BB and per ENERGY STAR's Lamps specification, DOE believes the majority of manufacturers and independent laboratories already have this accreditation. Therefore, DOE does not believe it is unduly burdensome to manufacturers or independent laboratories to be properly accredited to this standard.

DOE notes that its proposed test procedures directly reference existing industry standards that have been approved for widespread use by lamp manufacturers and test laboratories. The quantities that are directly measured, namely initial lumen output and input power, are commonly reported by the manufacturer on product packaging and on product specification sheets. Thus, testing for these quantities is already being conducted. Additionally, these quantities are required to be reported to ENERGY STAR if manufacturers certify the lamps as meeting the program requirements. Standby mode power consumption is also a reported quantity for the ENERGY STAR program, though it may not be a commonly reported value for lamps that are not certified with ENERGY STAR. In reviewing the lamps for which DOE proposes new test procedures in this rulemaking, DOE notes that very few products can operate in standby mode and therefore very few products would be required to make representations of standby mode energy consumption. Although DOE has proposed the requirement that all testing be conducted in accredited laboratories, DOE believes that many manufacturers of these products have already accredited their own in-house laboratories because they also make products such as general service incandescent lamps and medium base compact fluorescent lamps that are required to be tested in similarly accredited laboratories.

In summary, DOE does not consider the test procedures proposed in this SNOPR to have a significant economic impact on small entities. The final cost per manufacturer primarily depends on the number of basic models the manufacturer sells. These are not annual costs because DOE does not require manufacturers to retest a basic model annually. The initial test results used to generate a certified rating for a basic model remain valid as long as the basic model has not been modified from the tested design in a way that makes it less efficient or more consumptive, which would require a change to the certified rating. If a manufacturer has modified a basic model in a way that makes it more efficient or less consumptive, new testing is required only if the manufacturer wishes to make representations of the new, more efficient rating.

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[9] As discussed in section III.D, laboratories can be accredited by any accreditation body that is a signatory member to the ILAC MRA. DOE based its estimate of the costs associated with accreditation on the NVLAP accreditation body.

[10] NVLAP costs are fixed and were distributed based on an estimate of 28 basic models per manufacturer.

Based on the criteria outlined earlier and the reasons discussed in this preamble, DOE tentatively concludes and certifies that the new proposed test procedures would not have a significant economic impact on a substantial number of small entities, and the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

DOE established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. 10 CFR part 429, subpart B. This collection-of-information requirement was approved by OMB under OMB control number 1910–1400.

DOE requested OMB approval of an extension of this information collection for three years, specifically including the collection of information proposed in the present rulemaking, and estimated that the annual number of burden hours under this extension is 30 hours per company. In response to DOE's request, OMB approved DOE's information collection requirements covered under OMB control number 1910–1400 through November 30, 2017. 80 FR 5099 (January 30, 2015).

Notwithstanding any other provision of the law, no person is required to respond to, nor must any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedures for certain categories of GSLs that will be used to support the ongoing GSL standards rulemaking. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule adopts existing industry test procedures for certain categories of general service lamps, so it will not affect the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to propose test procedures for certain categories of GSLs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Public Law 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed test procedures for certain categories of GSLs incorporate testing methods contained in certain sections of the following commercial standards:

(1) IES LM–45–15, "IES Approved Method for the Electrical and Photometric Measurement of General Service Incandescent Filament Lamps," 2015;

(2) IES LM–20–13, "IES Approved Method for Photometry of Reflector Type Lamps," 2013;

(3) IES LM–79–08, "Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products," 2008;

(4) IES LM–9–09, "IES Approved Method for the Electrical and Photometric Measurement of Fluorescent Lamps," 2009; and

(5) IEC Standard 62301 (Edition 2.0), "Household electrical appliances—Measurement of standby power," 2011.

DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this SNOPR, DOE proposes to incorporate by reference certain sections of the test standard published by IEC, titled "Household electrical appliances—Measurement of standby power (Edition 2.0)," IEC 62301–DD. IEC 62301–DD is an industry accepted test standard that describes measurements of electrical power consumption in standby mode, off mode, and network mode. The test procedures proposed in this SNOPR reference sections of IEC 62301–DD for testing standby mode power consumption of GSLs. IEC 62301–DD is readily available on IEC's Web site at *https://webstore.iec.ch/home.*

DOE also proposes to incorporate by reference specific sections of the test standard published by IES, titled "IES Approved Method for the Electrical and Photometric Measurement of Fluorescent Lamps," IES LM–9–09–DD. IES LM–9–09–DD is an industry accepted test standard that specifies procedures to be observed in performing measurements of electrical and photometric characteristics of fluorescent lamps under standard conditions. The test procedures proposed in this SNOPR reference sections of IES LM–9–09–DD for performing electrical and photometric measurements of other fluorescent lamps. IES LM–9–09–DD is readily available on IES's Web site at *www.ies.org/store/.*

DOE also proposes to incorporate by reference specific sections of the test standard published by IES, titled "IES Approved Method for Photometry of Reflector Type Lamps," IES LM–20–13. IES LM–20–13 is an industry accepted test standard that specifies photometric test methods for reflector lamps. The test procedures proposed in this SNOPR reference sections of IES LM–20–13 for performing electrical and photometric measurements of other incandescent lamps that are reflector lamps. IES LM–20–13 is readily available on IES's Web site at *www.ies.org/store.*

DOE also proposes to incorporate by reference specific sections of the test standard published by IES, titled "IES Approved Method for the Electrical and Photometric Measurement of General Service Incandescent Filament Lamps," IES LM–45–15. IES LM–45–15 is an industry accepted test standard that specifies procedures to be observed in performing measurements of electrical and photometric characteristics of general service incandescent filament lamps under standard conditions. The test procedures proposed in this SNOPR reference sections of IES LM–45–15 for performing electrical and photometric measurements of other incandescent lamps that are not reflector lamps. IES LM–45–15 is readily available on IES's Web site at *www.ies.org/store/*.

DOE also proposes to incorporate by reference specific sections of the test standard published by IES, titled "IES Approved Method for the Electrical and Photometric Measurement of Solid-State Lighting Products," IES LM–79–08–DD. IES LM–79–08–DD is an industry accepted test standard that specifies electrical and photometric test methods for solid-state lighting products. The test procedures proposed in this SNOPR reference sections of IES LM–79–08–DD for performing electrical and photometric measurements of OLED lamps and non-integrated LED lamps. IES LM–79–08 is readily available on IES's Web site at *www.ies.org/store.*

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this SNOPR. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this SNOPR.

Submitting comments via www.regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this proposed rulemaking, DOE is particularly interested in comments on the following issues.

(1) DOE requests comment on the appropriateness of referencing IES LM–79–08 for the testing of non-integrated LED lamps. DOE also requests comment on the proposed requirement that manufacturers report the settings used for the testing of non-integrated LED lamps, specifically input voltage and current, and whether additional settings are needed to ensure consistent, repeatable results. DOE requests comment on whether the manufacturer-

declared settings should be made available to the public so that accurate comparisons across products could be made.

(2) DOE requests comment on the industry standards and sections of the industry standards referenced in its proposed test methods.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on July 8, 2016.

Steven G. Chalk,

Deputy Assistant Secretary for Operations, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.27 is amended by revising paragraphs (b)(2)(i), (ii) and (iii) to read as follows:

§ 429.27 General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.

* * * * *

(b) * * *

(2) * * *

(i) *General service fluorescent lamps.* The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, production dates of the units tested, the 12-month average lamp efficacy in lumens per watt (lm/W), lamp wattage (W), correlated color temperature in Kelvin (K), and the 12-month average Color Rendering Index (CRI).

(ii) *Incandescent reflector lamps.* The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, production dates of the units tested, the 12-month average lamp efficacy in lumens per watt (lm/W), and lamp wattage (W).

(iii) *General service incandescent lamps,* The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, production dates of the units tested, the 12-month average maximum rate wattage in watts (W), the 12-month average minimum rated lifetime (hours), and the 12-month average Color Rendering Index (CRI).

* * * * *

■ 3. Section 429.35 is amended by revising paragraph (b)(2) to read as follows:

§ 429.35 Bare or covered (no reflector) medium base compact fluorescent lamps.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, the minimum initial efficacy in lumens per watt (lm/W), the lumen maintenance at 1,000 hours in percent (%), the lumen maintenance at 40 percent of rated life in percent (%), the rapid cycle stress test in number of units passed, and the lamp life in hours (h).

■ 4. Section 429.57 is added to read as follows:

§ 429.57 General service lamps.

(a) *Determination of represented value.* Manufacturers must determine represented values, which includes certified ratings, for each basic model of general service lamp in accordance with following sampling provisions.

(1) The requirements of § 429.11 are applicable to general service lamps, and

(2) For general service incandescent lamps, use § 429.27(a);

(3) For compact fluorescent lamps, use § 429.35(a);

(4) For integrated LED lamps, use § 429.56(a);

(5) For other incandescent lamps, use § 429.27(a);

(6) For other fluorescent lamps, use § 429.35(a); and

(7) For OLED lamps and non-integrated LED lamps, use § 429.56(a).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to general service lamps;

(2) Values reported in certification reports are represented values;

(3) For general service incandescent lamps, use § 429.27(b);

(4) For compact fluorescent lamps, use § 429.35(b);

(5) For integrated LED lamps, use § 429.56(b); and

(6) For other incandescent lamps, for other fluorescent lamps, for OLED lamps and non-integrated LED lamps, pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, initial lumen output, input power, lamp efficacy, and power factor. For non-integrated LED lamps, the certification report must also include the input voltage and current used for testing.

(c) *Rounding requirements.* (1) Round input power to the nearest tenth of a watt.

(2) Round initial lumen output to three significant digits.

(3) Round lamp efficacy to the nearest tenth of a lumen per watt.

(4) Round power factor to the nearest hundredths place.

(5) Round standby mode power to the nearest tenth of a watt.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 5. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 6. Section 430.3 is amended by:

■ a. Redesignating paragraph (o)(3) as (o)(4);

■ b. Adding paragraph (o)(3);

■ c. Redesignating paragraph (o)(4) as (o)(5);

■ d. Redesignating paragraph (o)(5) as (o)(7);

■ e. Redesignating paragraph (o)(6) as (o)(9);

■ e. Adding new paragraph (o)(6);

■ f. Redesignating paragraph (o)(8) as (o)(11);

■ g. Adding new paragraph (o)(8);

■ f. Redesignating paragraphs (o)(7) and (o)(9) as (o)(10) and (o)(12); and

■ g. Adding paragraphs (o)(13) and (p)(6).

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(o) * * *

(3) IES LM–9–09 (“IES LM–9–09–DD”), IES Approved Method for the Electrical and Photometric Measurement of Fluorescent Lamps, approved January 31, 2009; IBR approved for appendix DD to subpart B, as follows:

(i) Section 4—Ambient and Physical Conditions;

(ii) Section 5—Electrical Conditions;

(iii) Section 6—Lamp Test Procedures; and

(iv) Section 7—Photometric Test Procedures: Section 7.5—Integrating Sphere Measurement.

* * * * *

(6) IES LM–20–13, IES Approved Method for Photometry of Reflector Type Lamps, approved February 4, 2013; IBR approved for appendix DD to subpart B, as follows:

(i) Section 4—Ambient and Physical Conditions;

(ii) Section 5—Electrical and Photometric Test Conditions;

(iii) Section 6—Lamp Test Procedures; and

(iv) Section 8—Total Flux Measurements by Integrating Sphere Method.

* * * * *

(8) IES LM–45–15, IES Approved Method for the Electrical and Photometric Measurement of General Service Incandescent Filament Lamps, approved August 8, 2015; IBR approved for appendix DD to subpart B as follows:

(i) Section 4—Ambient and Physical Conditions;

(ii) Section 5—Electrical Conditions;

(iii) Section 6—Lamp Test Procedures; and

(iv) Section 7—Photometric Test Procedures: Section 7.1—Total Luminous Flux Measurements with an Integrating Sphere.

* * * * *

(13) IES LM–79–08 (“IES LM–79–08–DD”), IES Approved Method for the Electrical and Photometric Measurement of Solid-State Lighting Products, approved January 31, 2009; IBR approved for appendix DD to subpart B as follows:

(i) Section 1.3—Nomenclature and Definitions (except section 1.3[f]);

(ii) Section 2.0—Ambient Conditions;

(iii) Section 3.0—Power Supply Characteristics;

(iv) Section 5.0—Stabilization of SSL Product;

(v) Section 7.0—Electrical Settings;

(vi) Section 8.0—Electrical Instrumentation;

(vii) Section 9—Test Methods for Total Luminous Flux measurement: Section 9.1 Integrating Sphere with a Spectroradiometer (Sphere-spectroradiometer System); and

(viii) Section 9—Test Methods for Total Luminous Flux measurement: Section 9.2—Integrating Sphere with a Photometer Head (Sphere-photometer System).

* * * * *

(p) * * *

(6) IEC 62301, (“IEC 62301–DD”), Household electrical appliances—Measurement of standby power, (Edition 2.0, 2011–01); IBR approved for appendix DD to subpart B as follows:

(i) Section 5—Measurements.

* * * * *

■ 7. Section 430.23 is amended by adding paragraph (ff) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(ff) *General Service Lamps.* (1) For general service incandescent lamps, measure lamp efficacy in accordance with paragraph (r) of this section.

(2) For compact fluorescent lamps, measure lamp efficacy, lumen maintenance at 1,000 hours, lumen maintenance at 40 percent of lifetime, rapid cycle stress, time to failure, power factor, CRI, start time, and standby mode power in accordance with paragraph (y) of this section.

(3) For integrated LED lamps, measure lamp efficacy, power factor, and standby mode power in accordance with paragraph (ee) of this section.

(4) For other incandescent lamps, measure initial light output, input power, lamp efficacy, power factor, and standby mode power in accordance with appendix DD of this subpart.

(5) For other fluorescent lamps, measure initial light output, input power, lamp efficacy, power factor, and standby mode power in accordance with appendix DD of this subpart.

(6) For OLED and non-integrated LED lamps, measure initial light output, input power, lamp efficacy, power factor, and standby mode power in accordance with appendix DD of this subpart.

■ 8. Section 430.25 is revised to read as follows:

§ 430.25 Laboratory Accreditation Program.

The testing for general service fluorescent lamps, general service lamps (with the exception of applicable lifetime testing), incandescent reflector lamps, and fluorescent lamp ballasts must be conducted by test laboratories accredited by an Accreditation Body that is a signatory member to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). A manufacturer’s or importer’s own laboratory, if accredited, may conduct the applicable testing.

■ 9. Appendix DD to subpart B of part 430 is added to read as follows:

Appendix DD to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption and Energy Efficiency of General Service Lamps that are not General Service Incandescent Lamps, Compact Fluorescent Lamps, or Integrated LED Lamps.

Note: On or after [*INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE* ***FEDERAL REGISTER***], any representations, including certifications of compliance (if required), made with respect to the energy use or efficiency of general service lamps that are not general service incandescent lamps, compact fluorescent lamps, or integrated LED lamps must be made in accordance with the results of testing pursuant to this appendix DD.

1. *Scope:* This appendix DD specifies the test methods required to measure the initial lumen output, input power, lamp efficacy, power factor, and standby mode energy consumption of general service lamps that are not general service incandescent lamps, compact fluorescent lamps, or integrated LED lamps.

2. *Definitions:*

Measured initial input power means the input power to the lamp, measured after the lamp is stabilized and seasoned (if applicable), and expressed in watts (W).

Measured initial lumen output means the lumen output of the lamp measured after the lamp is stabilized and seasoned (if applicable), and expressed in lumens (lm).

Power factor means the measured initial input power (watts) divided by the product of the input voltage (volts) and the input current (amps) measured at the same time as the initial input power.

3. Active Mode Test Procedures

3.1. Take measurements at full light output.

3.2. Do not use a goniophotometer.

3.3. For OLED and non-integrated LED lamps, position a lamp in either the base-up and base-down orientation throughout testing. An equal number of lamps in the sample must be tested in the base-up and base-down orientations, except that, if the manufacturer restricts the position, test all of the units in the sample in the manufacturer-specified position.

3.4. Operate the lamp at the rated voltage throughout testing. For lamps with multiple rated voltages including 120 volts, operate the lamp at 120 volts. If a lamp is not rated for 120 volts, operate the lamp at the highest rated input voltage. For non-integrated LED lamps, operate the lamp at the manufacturer-declared input voltage and current.

3.5. Operate the lamp at the maximum input power. If multiple modes occur at the same maximum input power (such as variable CCT or CRI), the manufacturer may select any of these modes for testing; however, all measurements must be taken at the same selected mode. The manufacturer must indicate in the test report which mode was selected for testing and include detail such that another laboratory could operate the lamp in the same mode.

3.6. To measure initial lumen output, input power, input voltage, and input current use the test procedures in the table in this section.

TABLE 3.1—REFERENCES TO INDUSTRY STANDARD TEST PROCEDURES

Lamp type	Referenced test procedure
General service incandescent lamps	Appendix R to Subpart B of 10 CFR part 430.
Compact fluorescent lamps	Appendix W to Subpart B of 10 CFR part 430.
Integrated LED lamps	Appendix BB to Subpart B of 10 CFR part 430.
Other incandescent lamps that are not reflector lamps	IES LM–45–15, sections 4–6, and section 7.1.
Other incandescent lamps that are reflector lamps	IES LM–20–13, sections 4–6, and section 8.
Other fluorescent lamps	IES LM–9–09–DD, sections 4–6, and section 7.5.
OLED lamps	IES LM–79–08–DD, sections 1.3 (except 1.3[f]), 2.0, 3.0, 5.0, 7.0, 8.0, 9.1 and 9.2.
Non-integrated LED lamps	IES LM–79–08–DD, sections 1.3 (except 1.3[f]), 2.0, 3.0, 5.0, 7.0, 8.0, 9.1 and 9.2.

* (incorporated by reference, see § 430.3)

3.7. Determine initial lamp efficacy by dividing the measured initial lumen output (lumens) by the measured initial input power (watts).

3.8. Determine power factor by dividing the measured initial input power (watts) by the product of the measured input voltage (volts) and measured input current (amps).

4. Standby Mode Test Procedure

4.1. Measure standby mode power only for lamps that are capable of standby mode operation.

4.2. Connect the lamp to the manufacturer-specified wireless control network (if applicable) and configure the lamp in standby mode by sending a signal to the lamp instructing it to have zero light output. Lamp must remain connected to the network throughout testing.

4.3. Operate the lamp at the rated voltage throughout testing. For lamps with multiple rated voltages including 120 volts, operate the lamp at 120 volts. If a lamp is not rated for 120 volts, operate the lamp at the highest rated input voltage.

4.4. Stabilize the lamp prior to measurement as specified in section 5 of IEC 62301–DD (incorporated by reference; see § 430.3).

4.5. Measure the standby mode power in watts as specified in section 5 of IEC 62301–DD (incorporated by reference; see § 430.3).

[FR Doc. 2016–17135 Filed 7–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8179; Directorate Identifier 2015–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2011–26–03, which applies to certain The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. AD 2011–26–03 currently requires installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. AD 2011–26–03 resulted from fuel system reviews conducted by the manufacturer. Since we issued AD 2011–26–03, we have received a report indicating that additional airplanes are affected by the identified unsafe condition. This proposed AD would add airplanes to the applicability. This AD would also add, for certain airplanes, detailed inspections of certain wire bundle clamps, certain Teflon sleeves, and certain fasteners; corrective actions if necessary; and installation of Teflon sleeves under certain wire bundle clamps. We are proposing this AD to prevent electrical arcing on the fuel tank boundary structure or inside the fuel tanks, which could result in a fire or explosion.

DATES: We must receive comments on this proposed AD by September 6, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8179.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8179; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM 140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–8179; Directorate Identifier 2015–NM–201–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88"), Amendment 21–78. Subsequently, SFAR 88 was amended by: Amendment 21–82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002) and Amendment 21–83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change "21–82" to "21–83").

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, combination of failures, and unacceptable (failure) experience. For all three failure criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

On December 5, 2011, we issued AD 2011–26–03, Amendment 39–16893 (76 FR 78138, December 16, 2011) ("AD 2011–26–03"), for certain The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. AD 2011–26–03 requires installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. AD 2011–26–03 resulted from fuel system reviews conducted by the manufacturer. We issued AD 2011–26–03 to prevent electrical arcing on the fuel tank boundary structure or inside the fuel tanks, which could result in a fire or explosion.

Actions Since AD 2011–26–03 Was Issued

Since we issued AD 2011–26–03, we have received a report indicating that additional airplanes are affected by the identified unsafe condition.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. The service information describes procedures for installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks; as well as detailed inspections of certain wire bundle clamps, certain Teflon sleeves, and certain fasteners; corrective actions if necessary; and installation of Teflon sleeves under certain wire bundle clamps. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2011–26–03. This proposed AD would also revise the applicability by adding Boeing Model 777–200LR and 777F series airplanes. This proposed AD would also require accomplishing the actions specified in the service information described previously, except as described in "Differences Between this Proposed AD and the Service Information". For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8179.

The phrase "corrective actions" is used in this proposed AD. "Corrective actions" correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

Boeing has issued Alternative Method of Compliance (AMOC) Notice 777–57A0050 AMOC 02, dated February 15, 2016, to provide the correct group applicability for "WORK PACKAGE 21: More Work: Rear Spar Wire Bundle Teflon sleeve Installation," Figure 3, and Figure 100 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. We have included these changes in paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

Costs of Compliance

We estimate that this proposed AD affects 182 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install Teflon sleeving and cap sealing (retained actions from AD 2011–26–03).	Up to 358 work-hours × $85 per hour = $30,430.	$2,241	Up to $32,671 ..	Up to $5,946,122.
Detailed inspections and installation of Teflon sleeves (new proposed actions).	Up to 53 work-hours × $85 per hour = $4,505.	[1] 0	Up to $4,505	Up to $819,910.

[1] We have received no definitive data that would enable us to provide parts cost estimates for the installation of Teflon sleeves (new proposed action) specified in this proposed AD.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–26–03, Amendment 39–16893 (76 FR 78138, December 16, 2011), and adding the following new AD:

The Boeing Company: Docket No. FAA–2016–8179; Directorate Identifier 2015–NM–201–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by September 6, 2016.

(b) Affected ADs

This AD replaces AD 2011–26–03, Amendment 39–16893 (76 FR 78138, December 16, 2011) ("AD 2011–26–03").

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as identified in the applicable service information specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(1) For The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F airplanes: Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015.

(2) For The Boeing Company Model 777–200 and –300 airplanes: Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006.

(3) For The Boeing Company Model 777–200, –300, and –300ER airplanes: Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007.

(4) For The Boeing Company Model 777–200, –200LR, –300, and –300ER airplanes: Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing on the fuel tank boundary structure or inside the main and center fuel tanks, which could result in a fire or explosion.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Corrective Actions (Installing Teflon Sleeving, Cap Sealing, One-Time Inspection), With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2011–26–03, with revised service information. Within 60 months after January 20, 2011 (the effective date of AD 2010–24–12, Amendment 39–16531 (75 FR 78588, December 16, 2010) ("AD 2010–24–12")), do the applicable actions specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD, except as required by paragraph (k)(2) of this AD.

(1) For airplanes identified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009: Install Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009; or Revision 4, dated September 28, 2015. As of the effective date of this AD, only use Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, for accomplishing the actions required by this paragraph.

(2) For airplanes identified in Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006: Cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006.

(3) For airplanes identified in Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007: Do a general visual inspection to determine if certain fasteners are cap sealed, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007. Do all applicable corrective actions before further flight.

(4) For Model 777–200, –300, and –300ER airplanes identified in Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008: Cap seal the fasteners in the center fuel tanks that were not sealed during production, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(h) Retained Cap Sealing the Fasteners, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2011–26–03, with no changes. For Model 777–200LR airplanes identified in Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008: Within 60 months after January 3, 2012 (the effective date of AD 2011–26–03), cap seal the fasteners in the center fuel tanks that were not sealed during production, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(i) New Detailed Inspection and Corrective Actions

For Group 1, Configurations 2 through 4 airplanes; Groups 2 through 4, Configurations 3 through 5 airplanes; Groups 5 through 43, Configuration 1 airplanes; and Groups 44 and 45 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Within 60 months after the effective date of this AD, do the applicable actions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, except as required by paragraph (k)(2) of this AD.

(1) For Group 1, Configurations 2 through 4 airplanes; Groups 2 through 4, Configurations 3 through 5 airplanes; Groups 5 through 43, Configuration 1 airplanes; and Groups 44 and 45 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Do a detailed inspection for installation of Teflon sleeves on certain wire bundle clamps, as applicable; a detailed inspection to determine the type of wire bundle clamp; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. Do all applicable corrective actions before further flight.

(2) For Group 1, Configurations 2 through 4 airplanes; and Groups 2 through 4, Configurations 3 through 5 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Do a detailed inspection for correct installation of certain Teflon sleeves, as applicable; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. Do all applicable corrective actions before further flight.

(3) For Group 1, Configurations 2 through 4 airplanes; and Groups 2 through 4, Configurations 3 through 5 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Do a detailed inspection for cap sealing of certain fasteners, as applicable; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015. Do all applicable corrective actions before further flight.

(j) New Installation of Teflon Sleeves

For Group 1, Configurations 2 through 5 airplanes; Groups 2 through 4, Configurations 3 through 6 airplanes; and Groups 5 through 43, Configuration 2 airplanes; as identified in Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015: Within 60 months after the effective date of this AD, install Teflon sleeves under certain wire bundle clamps, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, except as required by paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(k) Exception to the Service Information

(1) Where "WORK PACKAGE 21: More Work: Rear Spar Wire Bundle Teflon sleeve Installation" of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, specifies "Groups 5 through 43, Configuration 2," for this AD, "WORK PACKAGE 21: More Work: Rear Spar Wire Bundle Teflon sleeve Installation" of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, applies to Groups 5 through 43.

(2) Where Figure 3 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, specifies "Groups 1 through 7, and 9 through 43," for this AD, Figure 3 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, applies to Groups 1 through 43.

(3) Where Figure 100 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, specifies "Groups 5 through 43, Configuration 2," for this AD, Figure 100 of Boeing Service Bulletin 777–57A0050, Revision 4, dated September 28, 2015, applies to Groups 5 through 43.

(l) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g)(1) of this AD, if those actions were performed before January 20, 2011 (the effective date of AD 2010–24–12), using Boeing Alert Service Bulletin 777–57A0050, dated January 26, 2006; or Revision 1, dated August 2, 2007; provided that the applicable additional work specified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009, is done within the compliance time specified in paragraph (g) of this AD. The additional work must be done in accordance with Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

(2) This paragraph provides credit for the actions specified in paragraph (g)(3) of this AD, if those actions were performed before January 20, 2011 (the effective date of AD 2010–24–12), using Boeing Alert Service Bulletin 777–57A0057, dated August 7, 2006.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (n)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2011–26–03 are approved as AMOCs for the corresponding provisions of this AD.

(n) Related Information

(1) For more information about this AD, contact Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM 140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–16906 Filed 7–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AP51

Recognition of Tribal Organizations for Representation of VA Claimants

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning recognition of

certain national, State, and regional or local organizations for purposes of VA claims representation. Specifically, this rulemaking would allow the Secretary of Veterans Affairs to recognize tribal organizations in a similar manner as the Secretary recognizes State organizations. The proposed rule would allow a tribal organization that is established and funded by one or more tribal governments to be recognized for the purpose of providing assistance on VA benefit claims. In addition, the proposed rule would allow an employee of a tribal government to become accredited through a recognized State organization in a similar manner as a County Veterans' Service Officer (CVSO) may become accredited through a recognized State organization. The intended effect of this proposed rule is to improve access of Native American veterans to VA-recognized organizations and VA-accredited individuals who may assist them on their benefit claims.

DATES: Written comments must be received on or before September 19, 2016.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov*; by mail or hand delivery to the Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AP51, Recognition of Tribal Organizations for Representation of VA Claimants." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.regulations.gov/*.

FOR FURTHER INFORMATION CONTACT: Dana Raffaelli, Staff Attorney, Benefits Law Group, Office of the General Counsel, (022D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7699. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This proposed rule would amend part 14 of title 38, Code of Federal Regulations, to provide for the recognition of tribal organizations that are established and funded by tribal governments so that representatives of the organizations may assist Native American veterans and their families in the preparation, presentation, and prosecution of their VA benefit claims. The purpose of this proposed rule is to address the needs of Native American populations who are geographically isolated from existing recognized Veterans Service Organizations (VSOs) or who may not be utilizing other recognized VSOs due to cultural barriers or lack of familiarity with those organizations. Native American veterans face challenges accessing representation in VA claims because many live in remote areas that are far from the nearest accredited representative. In addition, some Native American veterans may prefer to seek assistance from organizations that are associated with their tribal government, rather than using other organizations that are not as familiar to them. This proposed rule would help facilitate the VA recognition of tribal organizations that are established and funded by one or more tribal governments and whose primary purpose is to serve Native American veterans.

Pursuant to 38 U.S.C. 5902, VA recognizes organizations and accredits their representatives for the preparation, presentation, and prosecution of claims under laws administered by VA. VA's regulation regarding the recognition of such organizations is 38 CFR 14.628, which currently does not expressly allow for the recognition of tribal organizations. Under the current regulations, however, any organization, including an organization created by one or more tribal governments, may apply for recognition by VA as either: (1) A national organization, or (2) a regional or local organization. To be recognized as a national organization, the organization must meet the requirements of § 14.628(a) and (d). To be recognized as a regional or local organization, the organization must meet the requirements of § 14.628(c) and (d). VA also accredits State organizations. To be recognized as a State organization, the organization must meet the requirements of § 14.628(b) and (d). Under the current regulations, VA has received only a few inquiries from tribal governments expressing interest in pursuing any type of VA recognition other than the type of recognition granted to State organizations. Pursuant to 38 CFR 14.627 and 14.629, VA recognition of a State organization is limited to organizations established and funded by a State, possession, territory, or Commonwealth of the United States, and the District of Columbia. This proposed rule would allow tribal governments to establish and fund tribal organizations in a similar manner as the State governments have established and funded State organizations. Allowing organizations that are created and funded by tribal governments to be recognized as "tribal organizations" rather than as national, regional or local organizations would afford VA the opportunity to acknowledge and affirm the long-standing recognition by the Federal government of tribes' inherent sovereignty and right to self-government.

This proposed rule would amend 38 CFR 14.627 by adding a paragraph (r) that would provide that tribal government means the Federally recognized governing body of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or Regional or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. This is consistent with the definition of Indian tribe in 38 CFR 39.2.

This proposed rule would amend current § 14.628(b) by redesignating it as paragraph (b)(1), "State organization," and adding paragraph (b)(2), "Tribal organization." VA would clarify that a *Tribal organization*, for the purposes of 38 CFR 14.626 through 14.637, is a legally established organization that is primarily funded and controlled, sanctioned, or chartered by one or more tribal governments and that has a primary purpose of serving the needs of Native American veterans; that only one tribal organization may be recognized for each tribal government; and, that, if a tribal organization is created and funded by more than one tribal government, the approval of each tribal government must be obtained prior to applying for VA recognition and that, if one of the supporting tribal governments withdraws from the tribal organization, the tribal organization must notify VA of the withdrawal and certify that the tribal organization can continue to meet the recognition requirements in § 14.628(d) without the participation of that tribal government. This change is intended to allow tribal organizations to be recognized in a similar manner as State organizations, while still taking into account the unique circumstances of tribal governments being sovereign nations and of varying sizes.

In order to ensure that all claimants for VA benefits receive responsible, qualified representation in the preparation, presentation, and prosecution in their claims for veterans' benefits, VA has established general criteria that apply to all organizations requesting VA recognition as a national, State, regional, or local organization under § 14.628(a) through (c). Therefore, tribal organizations would also need to meet these same general requirements in order to be recognized. Pursuant to § 14.628(d), an organization requesting recognition must: (1) Have as a primary purpose serving veterans, (2) demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans, (3) commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services, (4) maintain a policy and capability of providing complete claims service to each claimant requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service, and (5) take affirmative action, including training and monitoring of accredited representatives, to ensure proper handling of claims.

We recognize the varying sizes of tribal governments. We further recognize that, due to the size of certain smaller Indian tribes, a single tribal government may be unable to establish an organization that could demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans. A single tribal government may also be unable to establish an organization that would be able to adequately fund the necessary services of a tribal organization that provides assistance with VA benefit claims. Therefore, VA would consider applications from a tribal organization that is established and funded by one or more tribal governments to be recognized for the purpose of providing assistance on VA benefit claims. The approval of each tribal government would be necessary for VA to process the request for VA recognition. While VA is sensitive to the fact that some tribal governments may have difficulty meeting the substantial service commitment and funding requirements, VA must ensure that VA accredited organizations can provide long-term, competent representation. Therefore, VA would require that, if one of the supporting tribal governments withdraws from the tribal organization, the tribal organization must notify VA of the withdrawal and certify that the tribal organization continues to meet the recognition requirements in § 14.628(d) without the participation of that tribal government. We note that 25 U.S.C. 450b(l) recognizes the existence of tribal coalitions in the definition of tribal organization for the purpose of entering into contracts or grants for certain educational benefits. Additionally, in 38 CFR 39.2, VA has recognized the existence of a parallel concept for the purpose of applying for cemetery grants.

Based on our experience in applying § 14.628, we believe the proposed addition to the regulation would facilitate the recognition of Tribal organizations and would improve Native American veterans' access to accredited representatives. Once a tribal organization has been recognized by VA, the certifying official of the organization would be able to file for VA accreditation for the individuals that the organization wishes to become accredited as its representatives. *See* 38 CFR 14.629.

VA further recognizes that not all tribal governments may want to establish their own Tribal veterans organization and some may have already established working relationships with their respective State organizations to help address the needs of their Native American veteran population. We, therefore, propose to amend 38 CFR 14.629(a)(2) to allow for an employee of a tribal government that is not associated with a tribal organization, to become accredited as a representative of a State organization in a similar manner as a county employee, *i.e.*, a CVSO. In 1990, in order to further ensure the availability of competent representation for VA claimants, VA extended the opportunity for accreditation through State organizations to county veterans' service officers. See 54 FR 50772; 55 FR 38056. In extending this opportunity, VA cited the close association between States and county veterans' service officers, likening the association to that of a State employee under 54 FR 50772. In a previous rulemaking, VA recognized the fact that State governments do not have direct supervision of, or accountability for, CVSO, and therefore, to ensure adequate training and fitness to serve as a VA accredited representative, VA prescribed criteria that such officers must meet in order to become accredited. The criteria for a CVSO to become accredited through a State organization are outlined in § 14.629(a)(2)(i) through (iii). In order for a CVSO to be recommended for VA accreditation by a VA-recognized State organization, the officer must be a paid employee of the county working for it not less than 1,000 hours annually; have successfully completed a course of training and an examination which have been approved by a Regional Counsel with jurisdiction for the State; and receive either regular supervision and monitoring or annual training to assure continued qualification as a representative in the claims process. We note that the VA Office of the General Counsel (OGC) has recently undergone realignment and under the new structure Regional Counsels are now referred to as Chief Counsels. To avoid unnecessary confusion and because we intend to issue a direct final rule addressing the realignment of OGC and the changing of titles of certain OGC positions in the accreditation regulations in a single rulemaking, we are continuing to use the outdated title of Regional Counsel for this rulemaking.

Although tribal governments are not politically subordinate to State governments like county governments are, tribal governments often do have close, productive relationships with State governments through gaming compacts, cross-deputization, and other cooperative agreements. Therefore, we believe that the collaborative nature of the relationship between tribes and States supports the proposed concept of recognizing tribal veterans' service officers in a manner similar to county veterans' service officers. As stated above, we believe this additional path to become an accredited representative would further facilitate veterans obtaining representation across county, State, and tribal borders.

For consistency, the proposed rule would also amend 38 CFR 14.635 to extend office space opportunities already granted to certain employees of State organizations to employees of tribal organizations. The proposed rule would allow the Secretary to furnish office space and facilities, when available, to both State and tribal organization employees who are also accredited to national organizations for the purpose of assisting claimants in the preparation, presentation, and prosecution of claims for benefits.

We are also requesting from the Office of Management and Budget (OMB) approval for the provisions of § 14.628(d) that constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). Therefore, we would remove the current OMB control number parenthetical at the end of § 14.628 and add, in its place, a placeholder parenthetical.

Finally, we would make a technical amendment to § 14.629(a)(2) to correct "county veteran's service officer" to read as "county veterans' service officer". In a prior rulemaking, we misplaced the location of the apostrophe associated with the previously mentioned phrase. *See* 54 FR 50772 (Dec. 11, 1989); 55 FR 38056 (Sept. 17, 1990). Therefore, we would correct that error in this rulemaking.

Paperwork Reduction Act

This proposed rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Proposed § 14.628 contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; email to *www.Regulations.gov.* Comments should indicate that they are submitted in response to "RIN 2900–AP51."

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The collection of information contained in 38 CFR 14.628 is described immediately following this paragraph, under its respective title.

Title: Requirements for Recognition as a VA Accredited Organization.

- *Summary of collection of information:* The collection of information in 38 CFR 14.628 would require organizations seeking VA accreditation under § 14.628 to submit certain documentation to certify that the organization meets the requirements for VA accreditation. Pursuant to § 14.628(d), an organization requesting recognition must have as a primary purpose serving veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit a statement establishing the purpose of the organization and that veterans would benefit by recognition of the organization.

The organization must also demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit: The number of members and number of posts, chapters, or offices and their addresses; a copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate; a description of the services performed or to be performed in connection with programs administered by VA, with an approximation of the number of veterans, survivors, and dependents served or to be served by the organization in each type of service designated; and a description of the type of services, if any, performed in connection with other Federal and State programs which are designed to assist former Armed Forces personnel and their dependents, with an approximation of the number of veterans, survivors, and dependents served by the organization under each program designated.

An organization requesting recognition must commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services. In establishing that it meets this requirement, an organization requesting recognition shall submit: A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting particular veterans' services (VA may, in cases where it deems necessary, require an audited financial statement); and a statement indicating that use of the organization's funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before VA.

An organization requesting recognition must maintain a policy and capability of providing complete claims service to each claimant requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service. In establishing that it meets this requirement, an organization requesting recognition shall submit evidence of its capability to represent claimants before VA regional offices and before the Board of Veterans' Appeals. If an organization does not intend to represent claimants before the Board of Veterans' Appeals, the organization shall submit evidence of an association or agreement with a recognized service organization for the purpose of representation before the Board of Veterans' Appeals, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning the availability of alternative sources of claims service. If an organization does not intend to represent each claimant requesting assistance, the organization shall submit a statement of its policy concerning the selection of claimants and the proposed method of informing claimants of this policy, with advice concerning the availability of alternative sources of claims service.

An organization requesting recognition must take affirmative action, including training and monitoring of accredited representatives, to ensure proper handling of claims. In establishing that it meets this requirement, an organization requesting recognition shall submit: A statement of the skills, training, and other qualifications of current paid or volunteer staff personnel for handling veterans' claims; and a plan for recruiting and training qualified claim representatives, including the number of hours of formal classroom instruction, the subjects to be taught, the period of on-the-job training, a schedule or timetable for training, the projected number of trainees for the first year, and the name(s) and qualifications of the individual(s) primarily responsible for the training.

In addition, the organization requesting recognition shall supply: A statement that neither the organization nor its accredited representatives will charge or accept a fee or gratuity for service to a claimant and that the organization will not represent to the public that VA recognition of the organization is for any purpose other than claimant representation; and the names, titles, and addresses of officers and the official(s) authorized to certify representatives.

- *Description of need for information and proposed use of information:* The information is used by VA in reviewing accreditation applications to determine whether organizations meet the requirements for VA accreditation under § 14.628.
- *Description of likely respondents:* Organizations seeking VA accreditation under § 14.628.
- *Estimated number of respondents:* 5 applicants per year.
- *Estimated frequency of responses:* This is a one-time collection.
- *Estimated average burden per response:* 5 hours.
- *Estimated total annual reporting and recordkeeping burden:* 25 hours per year.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It does not require any action on the part of any entity but merely provides a new opportunity for tribal organizations to become recognized by VA for the purpose of assisting VA claimants in the preparation, presentation, and prosecution of claims for VA benefits. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 13175

Executive Order 13175 provides that Federal agencies may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs on tribal governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or the Federal agency consults with tribal officials early in the process of developing the proposed regulation, develops and publishes in the **Federal Register** a tribal summary impact statement, and provides to the Director of OMB any written communications submitted to the agency by the tribal officials.

On March 3 and 10, 2016, respectively, VA issued letters to tribal leaders as well as a **Federal Register** notice, 81 FR 12626, seeking comment on VA's consideration of issuing a proposed rule that would amend part 14 of title 38, Code of Federal Regulations, to expressly provide for the recognition of tribal organizations so that representatives of the organizations may assist Native American claimants in the preparation, presentation, and prosecution of their VA benefit claims. Those interested in providing comment were given 30-days to respond. Based on requests from commenters, VA expanded the comment period an additional 15 days to April 26, 2016. VA received comments from 36 commenters. A few commenters submitted more than one comment. Overall, the comments were supportive of issuing such a proposed rule.

One commenter wrote that, currently, their tribal representatives are being accredited through their State as well as other national organizations and was curious as to the "road blocks" other tribal organizations were facing. This commenter did not provide any suggestions, and therefore, no change to this rulemaking is warranted.

Several commenters noted that currently Native American veterans face many roadblocks to obtaining representation. One commenter noted that geography, economic, and culture barriers prevent Native American veterans from utilizing currently available representation. These comments were offered in support of the proposed rule, and therefore, no change to this rulemaking is warranted.

A few commenters misinterpreted the language provided in the consultation and notice as meaning that VA intended to propose that VA's recognition of a tribal organization would be tied to VA's recognition of the corresponding State organization. One commenter stated that VA should recognize a tribal organization as "equal to" a State organization. VA is not tying VA recognition of a tribal organization to a State and is choosing not to make value judgements as to the importance of the recognition granted to State organizations and Tribal organizations. Recognition of a tribal organization would stand on its own. VA has chosen to use the term *similar* rather than the term *equal* in this proposed rule because we are proposing some differences in the requirements for VA recognition of a tribal organization and the requirements for State organizations. Specifically, the proposed rule would allow a single tribal government, or multiple tribal governments to join together to establish and fund a tribal organization, but such allowance is not permitted for State governments.

A few commenters misinterpreted the language provided in the consultation and notice as limiting recognition of a tribal veterans' service officer through a State. One commenter asked for clarification on what type of employees would be eligible to become accredited by VA. The commenter stated that employees of a tribal nation as well as a tribal organization should be eligible. We agree, and the proposed rule would allow for both avenues to attain VA accreditation depending on the tribal government's size, relationships with other tribal governments, relationships with States, and the needs of Native American veterans in their area. After a tribal organization becomes recognized by VA, that organization would be able to request to have its own representatives accredited under 38 CFR 14.629. In addition to proposing to recognize tribal organizations and accredit their representatives, VA would provide an additional means by which VA may recognize an employee of a tribal government as a tribal veterans' service officer through a State organization. This accreditation would be akin to accreditation given to county veterans' service officers through State organizations and is only meant to provide an additional path to VA accreditation. We propose that the requirements for a tribal veterans' service officer to become accredited as a representative through a State organization be the same as the requirements for a county veterans' service officer. Therefore, VA makes no changes based on these comments.

One commenter asked what happens to the accreditation of a tribal organization if the Director is relinquished. It seems this comment stems from the misinterpretation previously discussed regarding the accreditation of a tribal organization and the corresponding State organization. The commenter also asked what happens if the State refuses to sponsor the replacement officer. As discussed above, once a tribal organization becomes recognized by VA, that organization would be able to request to have its own representatives accredited under § 14.629. The tribal organization can file with VA to have a replacement officer accredited. Therefore, VA makes no changes based on this comment.

Several commenters also expressed concern over the requirements for recognition in § 14.628(d). Specifically, the commenters expressed concern that many tribal organizations may not be able to satisfy the primary purpose, size, funding, and training requirements, to include providing the required, supporting documentation. One commenter suggested that VA provide the funding for tribes "to engage in this work." Another commenter suggested including Indian Health Services for funding assistance. A few commenters expressed concern about the requirement that the organization must maintain a policy of either providing complete claims representation or provide "written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service." 38 CFR 14.628(d)(1)(iv). One commenter seemed to believe VA was questioning the level of competence of tribal representatives. VA must ensure that VA accredited organizations can provide long-term, competent representation and has found that the § 14.628(d) requirements are protective of that mission. These requirements apply to all organizations seeking VA recognition. Exempting tribal organizations from meeting the § 14.628(d) requirements would not be consistent with the purpose of VA recognition to ensure that veterans are receiving qualified, competent representation on their VA benefit claims. As previously discussed, VA has provided additional means to achieve VA recognition or accreditation for those tribal governments that may have difficulty establishing a tribal organization capable of meeting the § 14.628(d) requirements, to include the ability for one or more tribal governments to establish and fund a tribal organization and the ability of an employee of a tribal government to become accredited as a tribal veterans' service officer through a recognized State organization. Therefore, VA makes no changes based on these comments.

One commenter suggested that VA grant accreditation to tribes through a Memorandum of Understanding and included their tribe's Memorandum of Understanding with their State. The commenter also questioned the role of VA in the accreditation and monitoring process. The laws governing VA accreditation are set out at 38 U.S.C. 5902 and 5904 and 38 CFR 14.626–14.637. These laws apply to all organizations, agents, and attorneys seeking VA accreditation. Pursuant to § 14.628, the organization requesting VA accreditation must certify to VA that the organization meets the § 14.628(d) requirements for recognition. Therefore, a Memorandum of Understanding between VA and a tribe is not sufficient for applying for VA accreditation. Furthermore, VA does monitor its accredited organizations, agents, and attorneys and handles disciplinary matters as they arise. Therefore, VA makes no changes based on this comment.

One commenter suggested that VA engage in additional consultation with Tribes that would be "interested in becoming recognized veterans['] service organizations, but are unable to meet the requirements." In the proposed rule, VA offers alternative avenues for VA recognition and accreditation for tribal governments that may not be capable of establishing an organization that can meet the VA recognition requirements in the proposed rule on their own. VA further welcomes additional comments as to the suitability of those alternative avenues through comments on this proposed rule. VA declines to make any changes based on this comment.

One commenter also recommended that "VA enter into Memorandums of Understanding with [F]ederally-recognized tribes and tribal organizations for [v]eterans' [s]ervice [o]fficer training and service reimbursement, on individual bases." Another commenter objected to the fact that there was "no mention of funding to train and maintain such a position." Section 5902, of title 38, United State Code, which is the law that authorizes VA to recognize organizations for the purpose of providing assistance on VA benefit claims, does not provide for the funding of such organizations to train and maintain representatives. Pursuant to § 14.628(d)(iii)(B), organizations are not precluded from seeking and receiving other sources of State and Federal grant funding so long as the organization's funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before VA. Therefore, VA declines to make any changes based on these comments.

One commenter wrote that VA ". . . should include [F]ederally-recognized tribes, not just tribal organizations funded by tribal governments, as an entity from which applications will be considered to be recognized for . . ." VA accreditation. Another commenter suggested adding "[F]ederally recognized tribes" or "[F]ederally recognized tribal governments" as part of the definition for tribal organizations. Another commenter suggested adding tribal communities. For the purposes of the regulations pertaining to the representation of VA claimants, VA proposes to define a tribal government to mean "the Federally recognized governing body of any Indian tribe, band, nation, or other organized group or community . . .". VA finds this definition to be inclusive of the comments, and therefore, no change is warranted.

One commenter suggested a legislative amendment to the definition of State in 38 U.S.C. 101(20) to include "[F]ederally recognized tribal governments." Amending the statutory language is something that only Congress can accomplish. Since VA is defining the term "tribal government" in regulation and providing an avenue for VA recognition of a tribal organization separate from a State organization, VA does not find such a legislative amendment necessary. Therefore, no change is warranted based on this comment.

Several commenters wrote that "[s]pecial attention must be paid to what specifically is meant by a '[t]ribal [o]rganization' " and that VA should offer a clear definition of the term. The commenters did not offer any suggestions for such definition. As previously discussed, VA is defining this term for the purposes of this rulemaking. Therefore, VA does not make any changes based on this comment.

Several commenters asked VA to clarify whether tribal governments, including veterans departments within these governments, would be eligible for VA recognition. A Department of Veterans Affairs or a Veterans Affairs office that is established and funded by a tribal government would be included in the definition of tribal organization. Therefore, no change to this rulemaking is warranted based on these comments.

One commenter asked that VA provide recognition for urban Indian organizations. The comment is unclear on whether such an organization would be able to apply for VA recognition as a tribal organization. VA declines to add an additional organization category at this time. In addition to the proposed amendments discussed in this rulemaking, an organization may still utilize other avenues to apply for VA recognition such as requesting VA recognition as a regional or local organization. To be recognized as a regional or local organization, an organization must meet the requirements of § 14.628(c) and (d).

Further, there are several ways that individuals, including tribal members, tribal government employees, and others who work within and serve tribal or Native American communities, may be accredited by VA to represent claimants. An individual may apply for accreditation as a representative through an existing VA-recognized organization under standards set forth in § 14.629(a). Alternatively, an individual may also seek accreditation in an individual capacity as either an agent or an attorney under the standards set forth in § 14.629(b). Therefore, VA declines to make any changes based on this comment.

A couple of commenters submitted statements certifying that their organization would meet the requirements for accreditation for a tribal organization. Applications for accreditation are outside the scope of this rulemaking. Therefore, no change is warranted based on these comments.

One commenter asked whether accredited tribal representatives would be granted access to software programs containing a veteran's claims file information and whether that access would be on tribal grounds. This issue is outside the scope of this rulemaking. Therefore, no change is warranted based on this comment.

One commenter expressed support for VA recognizing tribal organizations in an equal manner as VA recognizes State organizations but suggested that VA authorize a field office close to tribal administration locations and fund one or two veterans service officer positions. The tribal consultation and this proposed rulemaking are limited in scope to recognition for purposes of VA claims representation. The commenter's suggestion of adding a field office is beyond the scope, and therefore, VA declines to make any changes based on this comment. VA also declines to make any changes to the commenter's suggestion of funding job positions for veterans service officers. Part of the § 14.628(d) requirements is that an organization seeking accreditation must commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services. 38 CFR 14.628(d)(1)(iii).

A few commenters expressed concern that the proposed rulemaking is limiting VA recognition for the preparation, presentation, and prosecution of claims for VA benefits. One commenter seemed to think VA is depriving veterans from other title 38 benefits. The commenters did not specify what other accreditation they are seeking. As previously discussed, 38 CFR part 14 is limited in jurisdiction to recognizing organizations and accrediting individuals to assist in the preparation, presentation, and prosecution of VA benefit claims. Pursuant to section 5902, VA accreditation may not be granted for any other purpose. This rulemaking in no way deprives any veteran of any title 38 benefits. Therefore, no change is warranted based on these comments.

One commenter suggested that office space opportunities should be available to tribal governments and organizations in the same manner as they are available to State organizations. As previously discussed, this proposed rule would, under § 14.635, allow the Secretary to furnish office space and facilities, when available, to both State and tribal organization employees who are also accredited to national organizations for the purpose of assisting claimants in the preparation, presentation, and prosecution of claims for benefits. VA would be furnishing office space to tribal organizations in the same manner as it furnishes such space to State organizations. Therefore, no change is warranted based on this comment.

One commenter noted that VA should allow a tribal government employee to become accredited through an accredited body of their choice. VA in no way is limiting how a particular individual may apply to become an accredited VA representative. As previously discussed, VA is merely providing additional paths to VA accreditation than currently exist. Therefore, VA declines to make any changes to this rulemaking based on this comment.

Several commenters suggested further outreach and collaboration. One commenter suggested that VA form a tribal workgroup to allow representatives from tribal organizations to collaborate on implementing the new program. One commenter provided VA with their tribal consultation policy. Other commenters suggested that VA engage in additional consultation with experts in Indian law and hold an all-tribes call to gather additional input for this rulemaking. VA appreciates this information. As previously noted, VA extended the comment period for an additional 15 days to ensure that all interested parties had an appropriate time to provide input. Therefore, VA finds that it has complied with the requirements of Executive Order 13175. VA notes that an additional 60-day comment period is provided for this proposed rule and invites any additional comment to this rulemaking to be provided during that time.

One commenter asked for the projected implementation date of this rulemaking. VA will publish a final rule to this proposed rule which will contain the effective date of the rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action" requiring review by OMB, unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance programs numbers and titles associated with this proposed rule.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized Gina S. Farrisee, Deputy Chief of Staff, to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on July 14, 2016 for publication.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Dated: July 14, 2016.

Janet J. Coleman,

Chief, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 14 as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Amend § 14.627 by adding paragraph (r) to read as follows:

§ 14.627 Definitions.

* * * * *

(r) *Tribal government* means the Federally recognized governing body of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or Regional or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

■ 3. Amend § 14.628 by:

■ a. Redesignating paragraph (b) as paragraph (b)(1) and adding paragraph (b)(2); and

■ b. In the parenthetical at the end of the section, removing "2900–0439" and adding, in its place, 2900–XXXX".

The addition reads as follows:

§ 14.628 Recognition of organizations.

* * * * *

(b)(1) *State organization.* * * *

(2) *Tribal organization.* For the purposes of 38 CFR 14.626 through 14.637, an organization that is a legally established organization that is primarily funded and controlled, sanctioned, or chartered by one or more tribal governments and that has a primary purpose of serving the needs of Native American veterans. Only one tribal organization may be recognized for each tribal government. If a tribal organization is created and funded by more than one tgovernment, the approval of each tribal government must be obtained prior to applying for VA recognition. If one of the supporting tribal governments withdraws from the tribal organization, the tribal organization must notify VA of the withdrawal and certify that the tribal organization continues to meet the recognition requirements in paragraph (d) of this section.

* * * * *

§ 14.629 [Amended]

■ 4. Amend § 14.629 by:

■ a. In paragraph (a)(2) introductory text, removing "county veteran's service officer" and adding in its place "county veterans' service officer";

■ b. In paragraph (a)(2) introductory text, adding "or tribal veterans' service officer" immediately following "county veterans' service officer"; and

■ c. In paragraph (a)(2)(i), adding "or tribal government" immediately following "county".

§ 14.635 [Amended]

■ 5. Amend § 14.635 by adding, in the introductory paragraph, "or tribal" immediately following "State".

[FR Doc. 2016–17052 Filed 7–19–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0507; FRL–9949–30–Region 4]

Air Plan Approval; Florida; Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) submission, submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), on January 22, 2013, for inclusion into the Florida SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure SIP submission." FDEP certified that the Florida SIP contains provisions that ensure the 2010 1-hour NO_2 NAAQS is implemented, enforced, and maintained in Florida. With the exception of provisions pertaining to the ambient air quality monitoring and data system, prevention of significant deterioration (PSD) permitting and interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states, EPA is proposing to find that Florida's infrastructure SIP submission, provided to EPA on January 22, 2013, satisfies certain required infrastructure elements for the 2010 1-hour NO_2 NAAQS.

DATES: Written comments must be received on or before August 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0507 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Wong can be reached via electronic mail at *wong.richard@epa.gov* or via telephone at (404) 562–8726.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On February 9, 2010, EPA published a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013.[1]

In this action, EPA is proposing to approve Florida's infrastructure SIP submission for the applicable requirements of the 2010 1-hour NO_2 NAAQS, with the exception of the ambient air quality monitoring and data system requirements of section 110(a)(2)(B), the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) and the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of prongs 1 and 2 of section 110(a)(2)(D)(i). On March 18, 2015, EPA approved Florida's January 22, 2013 infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour NO_2 NAAQS. *See* 80 FR 14019. Therefore, EPA is not proposing any action today pertaining to sections 110(a)(2)(C), prong 3 of D(i), and (J). Additionally, EPA is not proposing action related to the ambient air quality monitoring and data system of section 110(a)(2)(B) and prongs 1 and 2 of section 110(a)(2)(D)(i). EPA will act on these provisions in a separate action. For the aspects of Florida's submittal proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that Florida's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2010 1-hour NO_2 NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)."[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection

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[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "Florida Administrative Code" or "F.A.C." indicates that the cited regulation has been approved into Florida's federally-approved SIP. The term "Florida statute" or "F.S." indicates cited Florida state statutes, which are not a part of the SIP unless otherwise indicated.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to today's proposed rulemaking.

- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Florida that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

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[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] See, *e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] See, *e.g.*, "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including GHGs. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

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[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how Florida addressed the elements of the sections 110(a)(1) and (2) "infrastructure" provisions?

Below is a discussion of the Florida submission organized by each of the sub-elements found in sections 110(a)(1) and (2).

1. 110(a)(2)(A) *Emission limits and other control measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. There are several regulations within Florida Administrative Code (F.A.C.) relevant to air quality control regulations which include enforceable emission limitations and other control measures. Chapters 62–204, F.A.C., *Air Pollution Control Provisions;* 62–210, F.A.C., *Stationary Sources—General Requirements; 62–212,* F.A.C., *Stationary Sources—Preconstruction Review;* 62–296, F.A.C., *Stationary Sources—Emissions Standards; and 62–297,* F.A.C., *Stationary Sources—Emissions Monitoring,* establish emission limits for NO_2 and address the

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[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

required control measures, means and techniques for compliance with the 2010 1-hour NO_2 NAAQS respectively. Additionally, the following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this infrastructure element. Section 403.061(9), Florida Statutes, authorizes FDEP to "[a]dopt a comprehensive program for the prevention, control, and abatement of pollution of the air . . . of the state," and section 403.8055, Florida Statutes, authorizes FDEP to "[a]dopt rules substantively identical to regulations adopted in the **Federal Register** by the United States Environmental Protection Agency pursuant to federal law . . ."

EPA has made the preliminary determination that the provisions contained in these chapters satisfy section 110(a)(2)(A) for the 2010 1-hour NO_2 NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during start up, shut down, and malfunction (SSM) of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[18]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* With respect to Florida's infrastructure SIP submission related to the ambient air quality monitoring and data system, EPA is not proposing any action today regarding these requirements and instead will act on this portion of the submission in a separate action.

3. 110(a)(2)(C) *Programs for enforcement of control measures and for construction or modification of stationary sources:* This element consists of three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). As discussed further below, in this action EPA is only proposing to approve the enforcement and the regulation of minor sources and minor modifications aspects of Florida's section 110(a)(2)(C) infrastructure SIP submission.

Enforcement: Florida cites to Section 403.061(6), Florida Statutes, which requires FDEP to "[e]xercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution." Section 403.121, Florida Statutes, authorizes FDEP to seek judicial and administrative remedies, including civil penalties, injunctive relief, and criminal prosecution for violations of any FDEP rule or permit. These provisions provide FDEP with authority for enforcement of NO_2 emission limits and control measures.

Preconstruction PSD Permitting for Major Sources: With respect to Florida's January 22, 2013, infrastructure SIP submission related to the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), EPA took final action to approve these provisions for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2010 1-hour NO_2 NAAQS. FDEP's SIP-approved rule Chapters 62–204, F.A.C., *Air Pollution Control Provisions,* 62–210, F.A.C., *Stationary Sources—General Requirements,* 62–212, F.A.C., *Stationary Sources—Preconstruction Review* apply to minor sources and minor modifications as well as major stationary sources and modifications.

EPA has made the preliminary determination that Florida's SIP is adequate for program enforcement of control measures and regulation of minor sources and modifications related to the 2010 1-hour NO_2 NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate pollution transport:* Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) because Florida's 2010 1-hour NO_2 NAAQS infrastructure submission did not address prongs 1 and 2.

110(a)(2)(D)(i)(II)—prong 3: With respect to Florida's infrastructure SIP submission related to the interstate transport requirements for PSD of section 110(a)(2)(D)(i)(II) (prong 3), EPA took final action to approve Florida's January 22, 2013, infrastructure SIP submission regarding prong 3 of D(i) for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

110(a)(2)(D)(i)(II)—prong 4: Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other states. In its submittal, Florida cited to EPA's proposed approval of the State's regional haze SIP, which EPA fully approved.[19] Federal regulations require that a state's regional haze SIP contain a long-term strategy to address regional haze visibility impairment in each Class I area within the state and each Class I area outside the state that may be affected by emissions from the state.[20] A state participating in a regional planning process, such as Florida, must include all measures needed to achieve its apportionment of emissions reduction obligations agreed upon through that process.[21] EPA's approval of Florida's regional haze SIP therefore ensures that emissions from Florida are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2010 1-hour NO_2 NAAQS.[22] Thus, EPA has made the preliminary determination that Florida's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS meets the requirements of prong 4 of section 110(a)(2)(D)(i)(II).

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[18] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

[19] *See* 77 FR 71111 (November 29, 2012); 78 FR 53250 (August 29, 2013).

[20] *See* 40 CFR 51.308(d).

5. 110(a)(2)(D)(ii): *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Chapters 62–204, F.A.C., *Air Pollution Control Provisions* ; 62–210, F.A.C., *Stationary Sources—General Requirements,* and 62–212, F.A.C., *Stationary Sources—Preconstruction Review* of the Florida SIP outlines how Florida will notify neighboring states of potential impacts from new or modified sources. EPA is unaware of any pending obligations for the State of Florida pursuant to sections 115 or 126 of the CAA. EPA has made the preliminary determination that Florida's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour NO_2 NAAQS.

6. 110(a)(2)(E) *Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Florida's SIP as meeting the requirements of section 110(a)(2)(E). EPA's rationale for today's proposal respecting each requirement of section 110(a)(2)(E) is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), FDEP's infrastructure submission demonstrates that FDEP is responsible for promulgating rules and regulations for the NAAQS, emissions standards, general policies, a system of permits, and fee schedules for the review of plans, and other planning needs. Section 403.061(2), Florida Statutes, authorizes FDEP to "[h]ire only such employees as may be necessary to effectuate the responsibilities of the department." Section 403.061(4), Florida Statutes, authorizes FDEP to "[s]ecure necessary scientific, technical, research, administrative, and operational services by interagency agreement, by contract, or otherwise." Section 403.061(35), Florida Statutes, authorizes FDEP to exercise the duties, powers, and responsibilities required of the state under the federal CAA. Section 403.182, Florida Statutes, authorizes FDEP to approve local pollution control programs, and provides for the State air pollution control program administered by FDEP to supersede a local program if FDEP determines that an approved local program is inadequate and the locality fails to take the necessary corrective actions. Section 320.03(6), Florida Statutes, authorizes FDEP to establish an Air Pollution Control Trust Fund and use a $1 fee on every motor vehicle license registration sold in the State for air pollution control purposes. As evidence of the adequacy of FDEP's resources, EPA submitted a letter to Florida on April 19, 2016, outlining section 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to Florida can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0507. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Florida satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2013, therefore Florida's grants were finalized. EPA has made the preliminary determination that Florida has adequate resources and authority for implementation of the 2010 1-hour NO_2 NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP provide: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed.

For purposes of section 128(a)(1), Florida has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by an appointed Secretary. Appeals of final administrative orders and permits are available only through the judicial appellate process described at Florida Statute 120.68, F.S., *Judicial review.* As such, a "board or body" is not responsible for approving permits or enforcement orders in Florida, and the requirements of section 128(a)(1) are not applicable.

Regarding section 128(a)(2), on July 30, 2012, EPA approved Florida statutes into the SIP to comply with section 128 respecting state boards. *See* 77 FR 44485. Specifically, the following provisions of Florida Statutes, 112.3143(4), F.S., *Voting conflicts* and 112.3144, F.S, *Full and public disclosure of financial interests* were incorporated into the SIP to satisfy the conflict of interest provisions applicable to the head of FDEP and all public officers within the Department. EPA has made the preliminary determination that the State has adequately addressed the requirements of section 128(a)(2), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements.

Therefore, EPA is proposing to approve Florida's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) *Stationary source monitoring and reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing (i)

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[21] *See, e.g.,* 40 CFR 51.308(d)(3)(ii). Florida participated in the Visibility Improvement State and Tribal Association of the Southeast regional planning organization, a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Southeastern United States. Member state and tribal governments included: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

[22] *See* EPA's September 13, 2013, guidance document entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)" at pp. 32–35, available at: *http://www.epa.gov/air/urbanair/sipstatus/infrastructure.html; see also* memorandum from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, to Regional Air Division Directors, entitled "Guidance on SIP Elements Required Under Sections 110(1)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) (September 25, 2009) at pp. 5–6, available at: *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.*

the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. FDEP's infrastructure SIP submission describes the establishment of requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. The Florida infrastructure SIP submission also describes how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. Florida meets these requirements through Chapters 62–204, 62–210, 62–212, 62–296, and 62–297, F.A.C., which require emissions monitoring and reporting for activities that contribute to NO_2 concentrations in the air, including requirements for the installation, calibration, maintenance, and operation of equipment for continuously monitoring or recording emissions, or provide authority for FDEP to establish such emissions monitoring and reporting requirements through SIP-approved permits and require reporting of NO_2 emissions.

The following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this infrastructure element. Section 403.061(13) authorizes FDEP to "[r]equire persons engaged in operations which may result in pollution to file reports which may contain . . . any other such information as the department shall prescribe . . .". Section 403.8055 authorizes FDEP to "[a]dopt rules substantively identical to regulations adopted in the **Federal Register** by the United States Environmental Protection Agency pursuant to federal law. . . ."

Section 90.401, Florida Statutes, defines relevant evidence as evidence tending to prove or disprove a material fact. Section 90.402, Florida Statutes, states that all relevant evidence is admissible except as provided by law. EPA is unaware of any provision preventing the use of credible evidence in the Florida SIP.[23]

Additionally, Florida is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Florida made its latest update to the NEI on November 5, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Florida's SIP and practices are adequate for the stationary source monitoring systems related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Florida's infrastructure SIP submission identifies air pollution emergency episodes and preplanned abatement strategies as outlined in Florida Statutes 403.131, *Injunctive relief, remedies,* and 120.569(2)(n), *Decisions which affect substantial interests.* Section 403.131 authorizes FDEP to enforce compliance with any rule, regulation or permit, order, to enjoin any violation specified in Section 403.061(1) or Florida Statutes. Section 403.061(1) authorizes injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the State and to protect human health, safety, and welfare caused or threatened by any violation. Section 120.569(2)(n) authorizes FDEP to issue emergency orders to address immediate dangers to public health, safety or welfare. These statutes were submitted for inclusion into the SIP to satisfy the requirements of section 110(a)(2)(G) of the CAA and were approved by EPA on July 30, 2012. *See* 77 FR 44485. EPA has made the preliminary determination that Florida's SIP and practices are adequate for emergency powers related to the 2010 1-hour NO_2 NAAQS.

9. 110(a)(2)(H) *SIP revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. FDEP is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Florida. Florida Statutes subsection 403.061(35) grants FDEP the broad authority to implement the CAA; also, subsection 403.061(9), F.S., authorizes FDEP to adopt a comprehensive program for the prevention, control, and abatement of pollution of the air . . . of the state, and from time to time review and modify such programs as necessary. FDEP has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Florida does not have any nonattainment areas for the 2010 1-hour NO_2 NAAQS but has made an infrastructure submission for this standard, which is the subject of this rulemaking. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2010 1-hour NO_2 NAAQS when necessary.

10. 110(a)(2)(J) *Consultation with government officials, public notification, and PSD and visibility protection:* EPA is proposing to approve Florida's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127; and visibility protection requirements of

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[23] "*Credible Evidence*" makes allowances for owners and/or operators to utilize "any credible evidence or information relevant" to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard.

part C of the Act. With respect to Florida's infrastructure SIP submission related to the preconstruction PSD permitting requirements of section 110(a)(2)(J), EPA took final action to approve Florida's January 22, 2013, 2010 1-hour NO_2 NAAQS infrastructure SIP for theses requirements on March 18, 2015. *See* 80 FR 14019. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and federal land managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Chapters 62–204, F.A.C., *Air Pollution Control Provisions, 62–210,* F.A.C., *Stationary Sources—General Requirements* and 62–212, F.A.C., *Stationary Sources—Preconstruction Review,* as well as Florida's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Florida adopted state-wide consultation procedures for the implementation of transportation conformity. Implementation of transportation conformity as outlined in the consultation procedures requires FDEP to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets for the SIP. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with government officials related to the 2010 1-hour NO_2 NAAQS when necessary.

Public notification (127 public notification): Section 403.061(21), Florida Statutes authorizes FDEP to advise, consult cooperate, and enter into agreements with other entities affected by the provisions of this act, rules, or policies of the department. Section 403.061(20) Florida Statues authorizes FDEP to collect and disseminate information relating to pollution. FDEP has public notice mechanisms in place to notify the public of NO_2 and other pollutant forecasting, including an air quality monitoring Web site providing alerts, *http://www.dep.state.fl.us/air/air_quality/countyaqi.htm.* EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2010 NO_2 NAAQS when necessary.

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. FDEP referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so FDEP does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that the visibility protection element of section 110(a)(2)(J) is approvable and that Florida does not need to rely on its regional haze program for this element.

11. 110(a)(2)(K) *Air quality modeling and submission of modeling data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. Chapter 62–204.800, F.A.C., *Federal Regulations Adopted by Reference,* incorporates by reference 40 CFR 52.21(l), which specifies that air modeling be conducted in accordance with 40 CFR part 51, Appendix W "Guideline on Air Quality Models." Chapters 62–210 and 62–212 require use of EPA approved modeling related to NO_2 concentrations in ambient air. Florida Statute 403.061(13) authorizes FDEP to require persons to file reports which may contain information used for modeling and 403.061(18) authorizes FDEP to encourage and conduct studies related to pollution. FDEP has the technical capability to conduct or review all air quality modeling associated with the NSR program and SIP related modeling, except photo chemical grid modeling which is contracted out. Additionally, Florida supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for NO_X, which includes NO_2. Taken as a whole, Florida's air quality regulations and statutes demonstrate that FDEP has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1-hour NO_2 NAAQS. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2010 1-hour NO_2 NAAQS when necessary.

12. 110(a)(2)(L) *Permitting fees:* This element necessitates that the SIP require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Funding for review of PSD and NNSR permits comes from a processing fee, submitted by permit applicants, required by paragraph 403.087(6)(a) of the Florida Statute.

These regulations demonstrate that Florida has the authority to provide FDEP ensures this is sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. Additionally, Florida has a fully approved title V operating permit program at Chapter 62–213.300 F.A.C.[24] that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Florida's SIP and practices adequately provide for permitting fees related to the 2010 NO_2 NAAQS, when necessary. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation and participation by affected local entities:* This element requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Florida statute 403.061(21) authorizes FDEP to "[a]dvise, consult, cooperate and enter into agreements with other agencies of

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[24] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department." Furthermore, FDEP has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP and Regional Haze Implementation Plan. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour NO_2 NAAQS when necessary.

V. Proposed Action

With the exception of the elements related to the ambient air quality monitoring and data system of section 110(a)(2)(B), the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J), and the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of prongs 1 and 2 of section 110(a)(2)(D)(i), EPA is proposing to approve Florida's January 22, 2013, SIP submission to incorporate provisions into the Florida SIP to address infrastructure requirements for the 2010 1-hour NO_2 NAAQS. EPA is proposing to approve portions of Florida's infrastructure submission for the 2010 1-hour NO_2 NAAQS because this submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 8, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–17055 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2016–0133, FRL–9949–33–Region 10]

Approval and Promulgation of Implementation Plans; Alaska: Infrastructure Requirements for the 2010 Nitrogen Dioxide and 2010 Sulfur Dioxide Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, states must submit a plan for the implementation, maintenance and enforcement of such standard, commonly referred to as infrastructure requirements. The Environmental Protection Agency (EPA) is proposing to approve the May 12, 2015 Alaska State Implementation Plan (SIP) submission as meeting the infrastructure requirements for the 2010 nitrogen dioxide (NO_2) and 2010 sulfur dioxide (SO_2) NAAQS.

DATES: Comments must be received on or before August 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2016–0133, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *http://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information that is restricted by statute from disclosure. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air and Waste, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357 or *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, it is intended to refer to the EPA.

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I. Background

On January 22, 2010, the EPA established a primary NO_2 NAAQS at 100 parts per billion (ppb), averaged over one hour, supplementing the existing annual standard (75 FR 6474). On June 2, 2010, the EPA promulgated a revised primary SO_2 NAAQS at 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520). The Clean Air Act (CAA) requires that states submit SIPs meeting CAA sections 110(a)(1) and (2) within three years after promulgation of a new or revised NAAQS. CAA sections 110(a)(1) and (2) require states to address basic SIP elements, including but not limited to emissions inventories, monitoring, and modeling to provide for the implementation, maintenance and enforcement of the NAAQS, the so-called infrastructure requirements. On September 13, 2013, the EPA issued guidance to address the infrastructure requirements for multiple standards, including the 2010 NO_2 and SO_2 NAAQS.[1]

On May 12, 2015, the Alaska Department of Environmental Conservation (ADEC) made a submission for purposes of CAA sections 110(a)(1) and (2) for the 2010 NO_2 and 2010 SO_2 NAAQS. We note that the submission also included revisions to Alaska's transportation conformity regulations, approved on September 8, 2015 (80 FR 53735), and updates to general air quality and permitting regulations, approved on May 19, 2016 (81 FR 31511).

II. Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised standard is promulgated. CAA section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to implement, maintain and enforce the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's guidance document clarified that two elements identified in CAA section 110(a)(2) are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather, are due at the time the nonattainment area plan requirements are due, pursuant to CAA section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) Submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR), nor does it address CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not triggered by a new or revised NAAQS, because the visibility requirements in part C, title I of the CAA are not changed by a new or revised NAAQS.

III. EPA Approach to Review of Infrastructure SIP Submissions

The EPA is acting upon the May 12, 2015, submission from Alaska that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 and 2010 SO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[2] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

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[1] Stephen D. Page, Director, Office of Air Quality Planning and Standards. "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)." Memorandum to EPA Air Division Directors, Regions 1–10, September 13, 2013.

The following examples of ambiguities illustrate the need for the EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while the EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.[3] Section 110(a)(2)(I) pertains to nonattainment SIP requirements, and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires the EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[4] This ambiguity illustrates that, rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, the EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether the EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, the EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, the EPA can elect to act on such submissions either individually or in a larger combined action.[5] Similarly, the EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS, without concurrent action on the entire submission. For example, the EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[6]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, the EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example, because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[7]

The EPA notes that interpretation of section 110(a)(2) is also necessary when the EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, the EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures, and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment, and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), the EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular

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[2] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[3] See, *e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[4] The EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[5] See, *e.g.*, "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (the EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of the EPA's 2008 fine particulate matter ($PM_{2.5}$) NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (the EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[6] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to the EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). The EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), the EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submission.

[7] For example, implementation of the 1997 fine particulate matter NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

SIP submission. In other words, the EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, the EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[8] The EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[9] The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[10] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues, and need not address others. Accordingly, the EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders, and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains the EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in the EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (a)(2)(D)(i)(II), and (a)(2)(J) focuses upon the structural PSD program requirements contained in part C and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under the EPA's regulations at 40 CFR 51.166, but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and the EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and the EPA's policies addressing such excess emissions ("SSM"); [11] (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Thus, the EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[12] It is important to note that the EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

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[8] The EPA notes, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not the EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[9] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[10] The EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions regarding section 110(a)(2)(D)(i)(I).

[11] Subsequent to issuing the 2013 Guidance, the EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. *See* "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

[12] By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption or affirmative defense for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

The EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. The EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1), and the list of elements in 110(a)(2), as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submission. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a "SIP call" whenever the EPA determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[13] Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] Significantly, the EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[15]

IV. EPA Evaluation

110(a)(2)(A): Emission Limits and Other Control Measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submission: The submission cites Alaska environmental and air quality laws set forth at Alaska Statutes (AS) Chapters 46.03 *Environmental Conservation* and 46.14 *Air Quality Control*, and regulations set forth at 18 AAC 50 Alaska Administrative Code Title 18 *Environmental Conservation*, Chapter 50 *Air Quality Control* (18 AAC 50). The relevant regulations are listed below:

- 18 AAC 50.010: Ambient Air Quality Standards.
- 18 AAC 50.015: Air Quality Designations, Classifications, and Control Regions.
- 18 AAC 50.040: Federal Standards Adopted by Reference.
- 18 AAC 50.055: Industrial Processes and Fuel Burning Equipment.
- 18 AAC 50.060: Pulp Mills.
- 18 AAC 50.260: Guidelines for Best Available Retrofit Technology Under the Regional Haze Rule.
- 18 AAC 50.302: Construction Permits.
- 18 AAC 50.306: Prevention of Significant Deterioration Permits.
- 18 AAC 50.345: Construction and Operating Permits: Standard Permit Conditions.
- 18 AAC 50.508: Minor Permits Requested by the Owner or Operator.
- 18 AAC 50.540: Minor Permit Application.
- 18 AAC 50.542: Minor Permit Review and Issuance.
- 18 AAC Chapter 53 Fuel Requirements for Motor Vehicles.

EPA analysis: On September 19, 2014, the EPA approved numerous revisions to the Alaska SIP, including updates to 18 AAC 50.010 *Ambient Air Quality Standards* to reflect revisions to the NAAQS, including the 2010 NO_2 and the 2010 SO_2 NAAQS (79 FR 56268). In addition, the EPA recently approved updates to a number of regulations in 18 AAC 50 on May 19, 2016 (81 FR 31511).

Alaska generally regulates emissions of NO_2, and SO_2 through its SIP-approved major and minor new source review (NSR) permitting programs, in addition to other rules described below. We note that there are no areas in Alaska currently designated nonattainment for the 2010 NO_2 NAAQS or the 2010 SO_2 NAAQS, and that the EPA has not yet completed designations for the 2010 SO_2 NAAQS. However, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of CAA section 110(a)(1). Regulations and other control measures for purposes of attainment planning under part D, title I of the CAA are due on a different schedule than infrastructure SIPs.

Alaska's major NSR program for attainment and unclassifiable areas generally incorporates certain Federal PSD program regulations by reference into the Alaska SIP. The EPA most recently approved revisions to Alaska's PSD permitting program on May 19, 2016 (81 FR 31511). The current Alaska SIP-approved PSD permitting program incorporates by reference specific regulations at 40 CFR 52.21 and 40 CFR 51.166 as of December 9, 2013.

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[13] For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[14] The EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.*, 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] See, *e.g.*, the EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.*, 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

With respect to Alaska's minor NSR permitting program, we have determined that the program regulates minor sources of NO_2 and SO_2. In addition, Alaska's SIP contains rules that establish controls to limit combustion-generated pollutants. These controls include incinerator emission standards, emission limits for specific industrial processes and fuel burning equipment, emission limits for pulp mills, visible emission limits on marine vessel emissions, and fuel requirements for motor vehicles. Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2010 NO_2 and 2010 SO_2 NAAQS.

In this action, we are not proposing to approve or disapprove any existing Alaska provisions with respect to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. The EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance and the EPA is addressing such state regulations in a separate action.[16] In the meantime, we encourage any state having a deficient SSM provision to take steps to correct it as soon as possible.

In addition, we are not proposing to approve or disapprove any existing Alaska rules with respect to director's discretion or variance provisions. The EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (*e.g.*, November 24, 1987, 52 FR 45109), and the EPA plans to take action in the future to address such state regulations through appropriate statutory mechanisms. In the meantime, we encourage any state having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for the establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submission: The submission references Alaska statutory and regulatory authority to conduct ambient air monitoring investigations. AS 46.03.020 *Powers of the department* paragraph (5) provides authority to undertake studies, inquiries, surveys, or analyses essential to the accomplishment of the purposes of ADEC. AS 46.14.180 *Monitoring* provides authority to require sources to monitor emissions and ambient air quality to demonstrate compliance with applicable permit program requirements. 18 AAC 50.201 *Ambient Air Quality Investigation* provides authority to require a source to do emissions testing, reduce emissions, and apply controls to sources.

The submission references ADEC's revised *Quality Assurance Project Plan for the State of Alaska Air Monitoring and Quality Assurance Program* as amended through February 23, 2010. This document is adopted by reference into the State Air Quality Control Plan at 18 AAC 50.030(4). Validated State & Local Air Monitoring Stations, and Special Purpose Monitoring ambient air quality monitoring data are verified, and then electronically reported to the EPA through the Air Quality System on a quarterly basis.

The submission also references 18 AAC 50.035 *Documents, Procedures, and Methods Adopted by Reference* which include the most current, Federal reference and interpretation methods for NO_2 and SO_2. These methods are used by ADEC in its ambient air quality monitoring program to determine compliance with the standards. The submission cites the regulatory requirements related to monitoring found at 18 AAC 50.201 *Ambient Air Quality Investigation*, 18 AAC 50.215 *Ambient Air Quality Analysis Methods*, and 18 AAC 50.220 *Enforceable Test Methods.*

EPA analysis: A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Alaska to the EPA on January 18, 1980 (40 CFR 52.70) and approved by the EPA on April 15, 1981. This air quality monitoring plan has been subsequently updated and approved by the EPA on October 28, 2015. The plan includes the implementation of NO_2 and SO_2 monitoring as required in 40 CFR part 58. We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

CAA section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submission: The submission references ADEC's statutory authority to regulate stationary sources via an air permitting program established in AS 46.14 *Air Quality Control*, Article 01 *General Regulations and Classifications* and Article 02 *Emission Control Permit Program.* The submission states that ADEC's PSD/NSR programs were approved by the EPA on August 14, 2007 (72 FR 45378). The submission references the following regulations:

- 18 AAC 50.020: Baseline Dates and Maximum Allowable Increases.
- 18 AAC 50.035: Documents, Procedures and Methods Adopted by Reference.
- 18 AAC 50.040: Federal Standards Adopted by Reference.
- 18 AAC 50.045: Prohibitions.
- 18 AAC 50.110: Air Pollution Prohibited.
- 18 AAC 50.215: Ambient Air Quality Analysis Methods.
- 18 AAC 50.302: Construction Permits.
- 18 AAC 50.306: Prevention of Significant Deterioration Permits.
- 18 AAC 50.345: Construction and Operating Permits: Standard Permit Conditions.
- 18 AAC 50.502: Minor Permits for Air Quality Protection.
- 18 AAC 50.508: Minor Permits Requested by the Owner or Operator.

The submission states that a violation of the prohibitions in the regulations above, or any permit condition, can result in civil actions (AS 46.03.760 *Civil action for pollution; damages*), administrative penalties (AS 46.03.761 *Administrative penalties*), or criminal penalties (AS 46.03.790 *Criminal penalties*). In addition, the submission refers to regulations pertaining to compliance orders and enforcement proceedings found at 18 AAC Chapter 95 *Administrative Enforcement.*

EPA analysis: With respect to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that Alaska statute provides ADEC authority to enforce air quality regulations, permits, and orders promulgated pursuant to AS 46.03 and AS 46.14. ADEC staffs and maintains an enforcement program to ensure compliance with SIP requirements. ADEC has emergency order authority when there is an imminent or present danger to health or welfare or potential for irreversible or irreparable damage to natural resources or the environment. Enforcement cases may be referred to the State Department of Law. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 2010 NO_2 and 2010 SO_2 NAAQS.

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[16] The EPA issued a final action titled "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction: Final Rule." This rulemaking responds to a petition for rulemaking filed by the Sierra Club that concerns SSM provisions in 39 states' SIPs (June 12, 2015, 80 FR 33840).

To generally meet the requirements of CAA section 110(a)(2)(C) with respect to the regulation of construction of new or modified stationary sources, states are required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2010 NO_2 and 2010 SO_2 NAAQS. As explained above, we are not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D, title I of the CAA.

The EPA most recently approved revisions to Alaska's PSD program on May 19, 2016 (81 FR 31511). Alaska's SIP-approved PSD program incorporates by reference certain Federal PSD program requirements at 40 CFR 52.21. In some cases, ADEC adopted provisions of 40 CFR 51.166 rather than the comparable provisions of 40 CFR 52.21 because 40 CFR 51.166 was a better fit for a SIP-approved PSD program. The Alaska PSD program incorporates by reference Federal PSD requirements at 40 CFR 52.21 and 40 CFR 51.166 revised as of December 9, 2013.

With respect to CAA section 110(a)(2)(C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the state has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of CAA section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating the state has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Alaska has shown that it has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gas (GHG) emissions. As discussed below, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) with respect to PSD.

On January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council* v. *EPA*, 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 $PM_{2.5}$ NAAQS, including the "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)," (73 FR 28321, May 16, 2008) (2008 $PM_{2.5}$ NSR Implementation Rule). The court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437. Subpart 4 of part D, title I of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 $PM_{2.5}$ NSR Implementation Rule addressed by the Court's decision promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 $PM_{2.5}$ NSR Implementation Rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the Court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 $PM_{2.5}$ NSR Implementation Rule in order to comply with the Court's decision.

Accordingly, our proposed approval of elements 110(a)(2)(C), (D)(i)(II) and (J) with respect to the PSD requirements does not conflict with the Court's opinion. The EPA interprets the CAA section 110(a)(1) and (2) infrastructure submissions due three years after adoption or revision of a NAAQS to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as ten years following designations for some elements.

In addition, on June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency*, 134 S. Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply the EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, the EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.*, 40 CFR 51.166(b)(48)(v)).

The EPA recently revised federal PSD rules in light of the Supreme Court decision (May 7, 2015, 80 FR 26183). In addition, we anticipate that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. We do not expect that all states have revised their existing PSD program regulations yet, however, we are evaluating submitted PSD program revision to ensure that the state's program correctly addresses GHGs, consistent with the Court's decision.

At present, the EPA has determined the Alaska SIP is sufficient to satisfy CAA section 110(a)(2)(C), (a)(2)(D)(i)(II) and (a)(2)(J) with respect to GHGs because the PSD permitting program previously-approved by the EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT.

The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that the EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect our proposed approval of the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C), (a)(2)(D)(i)(II) and (a)(2)(J) as those elements relate to a comprehensive PSD program.

Turning to the minor NSR requirement, we have determined that the Alaska Federally-approved minor NSR rules regulate minor sources for purposes of the 2010 NO_2 and 2010 SO_2 NAAQS. Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(D)(i): Interstate Transport

CAA section 110(a)(2)(D)(i) requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality, or from interfering with measures required to protect visibility (*i.e.*, measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)).

We note that Alaska's May 12, 2015, submission does not address the requirements of 110(a)(2)(D)(i)(I) for the 2010 NO_2 and 2010 SO_2 NAAQS. ADEC has addressed these requirements in a separate submission, and we intend to evaluate them in a future action. In this action, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii) for the 2010 NO_2 and 2010 SO_2 NAAQS.

State submission: For purposes of CAA section 110(a)(2)(D)(i)(II), the submission references the Alaska SIP-approved PSD program and the Alaska Regional Haze Plan.

EPA analysis: CAA section 110(a)(2)(D)(i)(II) requires state SIPs to contain adequate provisions prohibiting emissions which will interfere with any other state's required measures to prevent significant deterioration (PSD) of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4).

To address whether emissions from sources in Alaska interfere with any other state's required measures to prevent significant deterioration of air quality, the submissions referenced the Alaska Federally-approved PSD program. As discussed above, Alaska's SIP-approved PSD program last revised on May 19, 2016, currently incorporates by reference Federal PSD requirements as of December 9, 2013 (81 FR 31511). We are therefore proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to PSD (prong 3) for the 2010 NO_2 and 2010 SO_2 NAAQS.

To address whether emissions from sources in Alaska interfere with any other state's required measures to protect visibility, the submission references the Alaska Regional Haze SIP, which was submitted to the EPA on March 29, 2011. The Alaska Regional Haze SIP addresses visibility impacts across states within the region. On February 14, 2013, the EPA approved the Alaska Regional Haze SIP, including the requirements for best available retrofit technology (78 FR 10546).

The EPA believes, as noted in the 2013 guidance, that with respect to the CAA section 110(a)(2)(D)(i)(II) visibility sub-element, where a state's regional haze SIP has been approved as meeting all current obligations, a state may rely upon those provisions in support of its demonstration that it satisfies the requirements of CAA section 110(a)(2)(D)(i)(II) as it relates to visibility. Because the Alaska Regional Haze SIP was found to meet Federal requirements, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2010 NO_2 and 2010 SO_2 NAAQS (prong 4).

110(a)(2)(D)(ii): Interstate and International Transport Provisions

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

State submission: The submission references Alaska's Federally-approved PSD program and revisions to the SIP submitted by ADEC to update the Alaska PSD program.

EPA analysis: At 18 AAC 50.306(b), Alaska's PSD program incorporates by reference the general provisions of 40 CFR 51.166(q)(2) to describe the public participation procedures for PSD permits, including requiring notice to states whose lands may be affected by the emissions of sources subject to PSD. As a result, Alaska's PSD regulations provide for notice consistent with the requirements of the Federal PSD program. Alaska also has no pending obligations under section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(E): Adequate Resources

CAA section 110(a)(2)(E) requires each state to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requirements that the state comply with the requirements respecting state boards under CAA section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

State submission: The submission asserts that ADEC maintains adequate personnel, funding, and authority to implement the SIP. The submission refers to AS 46.14.030 *State Air Quality Control Plan* which provides ADEC statutory authority to act for the State and adopt regulations necessary to implement the State air plan. The submission also references 18 AAC 50.030 *State Air Quality Control Plan* which provides regulatory authority to implement and enforce the SIP.

With respect to CAA section 110(a)(2)(E)(ii), the submission states that Alaska's regulations on conflict of interest are found in Title 2 *Administration*, Chapter 50 *Alaska Public Offices Commission: Conflict of Interest, Campaign Disclosure, Legislative Financial Disclosure, and Regulations of Lobbying* (2 AAC 50.010–2 AAC 50.920). Regulations concerning financial disclosure are found in Title 2, Chapter 50, Article 1—*Public Official Financial Disclosure.* There are no state air quality boards in Alaska. The ADEC commissioner, however, as an appointed official and the head of an executive agency, is required to file a financial disclosure statement annually, by March 15th of each year, with the Alaska Public Offices Commission (APOC). These disclosures are publically available through APOC's Anchorage office. Alaska's Public Officials Financial Disclosure Forms and links to Alaska's financial disclosure regulations can be found at the APOC Web site: *http://doe.alaska.gov/apoc/home.html.*

With respect to CAA section 110(a)(2)(E)(iii) and assurances that the State has responsibility for ensuring adequate implementation of the plan where the State has relied on local or regional government agencies, the submission references statutory authority and requirements for establishing local air pollution control programs found at AS 46.14.400 *Local air quality control programs.*

The submission also states that ADEC provides technical assistance and regulatory oversight to the Municipality of Anchorage (MOA), Fairbanks North Star Borough (FNSB) and other local jurisdictions to ensure that the State Air Quality Control Plan and SIP objectives are satisfactorily carried out. ADEC has a Memorandum of Understanding with the MOA and FNSB that allows them to operate air quality control programs in their respective jurisdictions. The South Central Clean Air Authority has been established to aid the MOA and the Matanuska-Susitna Borough in pursuing joint efforts to control emissions and improve air quality in the air-shed common to the two jurisdictions. In addition, ADEC indicates the department works closely with local agencies on nonattainment plans.

EPA analysis: We are proposing to find that the Alaska SIP meets the adequate personnel, funding and authority requirements of CAA section 110(a)(2)(E)(i). Alaska receives sections 103 and 105 grant funds from the EPA and provides matching funds necessary to carry out SIP requirements. For purposes of CAA section 110(a)(2)(E)(ii), we previously approved Alaska's conflict of interest disclosure and ethics regulations as meeting the requirements of CAA section 128 on October 22, 2012 (77 FR 64427). Finally, we are proposing to find that Alaska has provided necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of the SIP as required by CAA section 110(a)(2)(E)(iii). Therefore we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(E) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(F): Stationary Source Monitoring System

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submission: The submission states that ADEC has general statutory authority in AS 46.14 *Air Quality Control* to regulate stationary sources via an air permitting program which includes permit reporting requirements, completeness determinations, administrative actions, and stack source monitoring requirements. The submission states ADEC has regulatory authority to determine compliance with these statutes via information requests (18 AAC 50.200) and ambient air quality investigations (18 AAC 50.201). Monitoring protocols and test methods for stationary sources are adopted by reference, including the Federal reference and interpretation methods for NO_2 and SO_2. The submission also references the SIP-approved Alaska PSD program. Ambient air quality and meteorological data that are collected for PSD purposes by stationary sources are reported to ADEC on a quarterly and annual basis.

The submission refers to the following statutory and regulatory provisions which provide authority and requirements for source emissions monitoring, reporting, and correlation with emission limits or standards:

- AS 46.14.140: Emission control permit program regulations.
- AS 46.14.180: Monitoring.
- 18 AAC 50.010: Ambient Air Quality Standards.
- 18 AAC 50.030: State Air Quality Control Plan.
- 18 AAC 50.035: Documents, Procedures, and Methods Adopted by Reference.
- 18 AAC 50.040: Federal Standards Adopted by Reference.
- 18 AAC 50.200: Information Requests.
- 18 AAC 50.201: Ambient Air Quality Investigation.
- 18 AAC 50.220: Enforceable Test Methods.
- 18 AAC 50.306: Prevention of Significant Deterioration Permits.
- 18 AAC 50.544: Minor Permits: Content.

EPA analysis: The Alaska SIP establishes compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep and report records, and collect ambient air monitoring data. 18 AAC 50.200 *Information Requests* provides ADEC authority to issue information requests to an owner, operator, or permittee for purposes of ascertaining compliance. 18 AAC 50.201 *Ambient Air Quality Investigations* provides authority to require an owner, operator, or permittee to evaluate the effect emissions from the source have on ambient air quality. In addition, 18 AAC 50.306 *Prevention of Significant Deterioration Permits* and 18 AAC 50.544 *Minor Permits: Content* provide for establishing permit conditions to require the permittee to install, use and maintain monitoring equipment, sample emissions, provide source test reports, monitoring data, emissions data, and information from analysis, keep records and make periodic reports on process operations and emissions. This information is made available to the public through public processes outlined in these SIP-approved rules.

Additionally, states are required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* Based on the above analysis, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(G): Emergency Episodes

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

State submission: The submission cites statutory authority including AS 46.03.820 *Emergency powers* which provides ADEC with emergency order authority where there is an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment. The submission also refers to 18 AAC 50.245 *Air Episodes and Advisories* which authorizes ADEC to declare an air alert, air warning, or air advisory to notify the public and prescribe and publicize curtailment action.

EPA analysis: Section 303 of the CAA provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an "imminent and substantial endangerment to public health or welfare, or the environment." The EPA finds that AS 46.03.820 *Emergency Powers* provides emergency order authority comparable to CAA Section 303. We also find that Alaska's emergency episode rule at 18 AAC 50.245 *Air Episodes and Advisories,* most recently approved by the EPA on August 14, 2007 (72 FR 45378), is consistent with the requirements of 40 CFR part 51 subpart H for NO_2 and SO_2 (prevention of air pollution emergency episodes, §§ 51.150 through 51.153). Specifically, 40 CFR 51.150 through 51.153 prescribes the requirements for emergency episode plans based on classification of regions in a state. As listed in 40 CFR 52.71 *Classification of Regions,* all regions in Alaska are classified Priority III for both NO_2 and SO_2. Areas classified Priority III do not need to develop episode plans under 40 CFR 51.150 through 51.153.

Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submission: The submission refers to statutory authority to adopt regulations in order to implement the CAA and the state air quality control program at AS 46.03.020(10)(A) *Powers of the Department* and AS 46.14.010(a) *Emission Control Regulations.* The submission also refers to regulatory authority to implement provisions of the CAA at 18 AAC 50.010 *Ambient Air Quality Standards.* The submission affirms that ADEC regularly updates the Alaska SIP as new NAAQS are promulgated by the EPA.

EPA analysis: As cited above, the Alaska SIP provides for revisions, and in practice, Alaska regularly submits SIP revisions to the EPA to take into account revisions to the NAAQS and other Federal regulatory changes. We have approved revisions to the Alaska SIP on numerous occasions in the past, most recently on May 19, 2016 (81 FR 31511), March 18, 2015 (80 FR 14038), September 19, 2014 (79 FR 56268), August 9, 2013 (78 FR 48611), May 9, 2013 (78 FR 27071) and January 7, 2013 (78 FR 900). We are proposing to approve the Alaska SIP as meeting the requirements of section 110(a)(2)(H) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

EPA analysis: There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1), because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but are rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) Submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation With Government Officials

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers with respect to NAAQS implementation requirements pursuant to section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submission: The submission refers to statutory authority to consult and cooperate with officials of local governments, state and Federal agencies, and non-profit groups found at AS 46.030.020 *Powers of the department* paragraphs (3) and (8). The submission states that municipalities and local air quality districts seeking approval for a local air quality control program shall enter into a cooperative agreement with ADEC according to AS 46.14.400 *Local air quality control programs*, paragraph (d). ADEC can adopt new CAA regulations only after a public hearing as per AS 46.14.010 *Emission control regulations*, paragraph (a). In addition, the submission states that public notice and public hearing regulations for SIP submission and air quality discharge permits are found at 18 AAC 15.050 and 18 AAC 15.060. Finally, the submission also references the SIP-approved Alaska PSD program.

EPA analysis: The EPA finds that the Alaska SIP, including the Alaska rules for major source permitting, contains provisions for consulting with government officials as specified in CAA section 121. Alaska's PSD program provides opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies. We most recently approved revisions to the Alaska PSD program on May 19, 2016 (81 FR 31511). In addition, the EPA most recently approved the Alaska rules that define transportation conformity consultation on September 8, 2015 (80 FR 53735). Finally, on February 14, 2013, we approved the Alaska Regional Haze SIP (78 FR 10546).

ADEC routinely coordinates with local governments, states, Federal land managers and other stakeholders on air quality issues including transportation conformity and regional haze, and provides notice to appropriate agencies related to permitting actions. Alaska regularly participates in regional planning processes including the Western Regional Air Partnership, which is a voluntary partnership of states, tribes, Federal land managers, local air agencies and the EPA, whose purpose is to understand current and evolving regional air quality issues in the West. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 2010 NO_2 and 2010 SO_2 NAAQS.

Section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. ADEC is a partner in the EPA's AIRNOW and Enviroflash Air Quality Alert programs, which provide air quality information to the public for five major air pollutants regulated by the CAA: Ground-level ozone, particulate matter, carbon monoxide, SO_2, and NO_2. Alaska also provides real-time air monitoring information to the public on the ADEC air quality Web site at *http://dec.alaska.gov/applications/air/envistaweb/*, in addition to air advisory information. During the summer months, the Fairbanks North Star Borough prepares a weekly Air Quality forecast for the Fairbanks area at *http://co.fairbanks.ak.us/airquality/*. We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for public notification for the 2010 NO_2 and 2010 SO_2 NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to Alaska's PSD program on May 19, 2016 (81 FR 31511). We are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for PSD for the 2010 NO_2 and 2010 SO_2 NAAQS. We note that our proposed approval of element 110(a)(2)(J) with respect to PSD is not affected by recent court vacaturs of the EPA's PSD implementing regulations. Please see our discussion regarding section 110(a)(2)(C).

With respect to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement related to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective. Based on the analysis above, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(K): Air Quality and Modeling/Data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submission: The submission states that air quality modeling is regulated under 18 AAC 50.215(b) *Ambient Air Quality Analysis Methods*. Estimates of ambient concentrations and visibility impairment must be based on applicable air quality models, databases, and other requirements specified in the EPA's Guideline on Air Quality Models are adopted by reference in 18 AAC 50.040 *Federal Standards Adopted by Reference*. Baseline dates and maximum allowable increases are found in Table 2 and Table 3, respectively, at 18 AAC 50.020 *Baseline Dates and Maximum Allowable Increases*.

EPA analysis: On May 19, 2016, we approved revisions to 18 AAC 50.215 *Ambient Air Quality Analysis Methods* and 18 AAC 50.040 *Federal Standards Adopted by Reference* (81 FR 31511). 18 AAC 50.040, at paragraph (f), incorporates by reference the EPA regulations at 40 CFR part 51, Appendix W *Guidelines on Air Quality Models* revised as of July 1, 2013.

Based on the foregoing, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(L): Permitting Fees

CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

State submission: The submission states that ADEC's statutory authority to assess and collect permit fees is established in AS 46.14.240 *Permit Administration Fees* and AS 46.14.250 *Emission Fees*. The permit fees for stationary sources are assessed and collected by the Air Permits Program according to 18 AAC 50, Article 4. ADEC is required to evaluate emission fee rates at least every four years and provide a written evaluation of the findings (AS 46.14.250(g); 18 AAC 50.410).

EPA analysis: The EPA fully approved Alaska's title V program on July 26, 2001 (66 FR 38940) with an effective data of September 24, 2001. While Alaska's operating permit program is not formally approved into the SIP, it is a legal mechanism the state can use to ensure that ADEC has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. The Alaska title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i).

In addition, Alaska regulations at 18 AAC 50.306(d)(2) and 18 AAC 50.311(d)(2) require fees for purposes of major new source permitting as specified in 18 AAC 50.400 through 18 AAC 50.499. Therefore, we are proposing to conclude that Alaska has satisfied the requirements of CAA section 110(a)(2)(L) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submission: The submission states ADEC has authority to consult and cooperate with officials and representatives of any organization in the State; and persons, organization, and groups, public and private using, served by, interested in, or concerned with the environment of the state. The submission refers to AS 46.030.020 *Powers of the department* paragraphs (3) and (8) which provide authority to ADEC to consult and cooperate with affected State and local entities. In addition, AS 46.14.400 *Local air quality control programs* paragraph (d) provides authority for local air quality control programs and requires cooperative agreements between ADEC and local air quality control programs that specify the respective duties, funding, enforcement responsibilities, and procedures.

EPA analysis: The EPA finds that the Alaska provisions cited above provide for local and regional authorities to participate and consult in the SIP development process. Therefore, we are proposing to approve the Alaska SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2010 NO_2 and 2010 SO_2 NAAQS.

V. Proposed Action

We are proposing to approve the Alaska SIP as meeting the following CAA section 110(a)(2) infrastructure elements for the 2010 NO_2 and 2010 SO_2 NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 21, 2016.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2016–17056 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0854; FRL–9948–99–Region 10]

Approval of Medford, Oregon; Carbon Monoxide Second 10-Year Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a second 10-year carbon monoxide (CO) limited maintenance plan (LMP) for the Medford area, submitted by the Oregon Department of Environmental Quality (ODEQ) on December 11, 2015, along with a supplementary submittal on December 30, 2015, as a revision to its State Implementation Plan (SIP). In accordance with the requirements of the Clean Air Act (CAA), the EPA is approving this SIP revision because it demonstrates that the Medford area will continue to meet the CO National Ambient Air Quality Standards (NAAQS) for a second 10-year period beyond redesignation, through 2025.

DATES: Comments must be received on or before August 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2015–0854 at *http://www.regulations.gov*, or via email to *Chi.John@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: John Chi, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, 1200 6th Avenue, Seattle, WA 98101; telephone number: 206–553–1185; email address: *Chi.John@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules and Regulations section of this **Federal Register**. The EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA will not take further action on this proposed rule.

If the EPA receives adverse comments, the EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 30, 2016.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2016–17058 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0362; FRL–9949–26–Region 4]

Air Plan Approval; North Carolina Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality (NCDAQ) on August 23, 2013, for inclusion into the North Carolina SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO_2) national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP submission. NCDAQ certified that the North Carolina SIP contains provisions that ensure the 2010 1-hour NO_2 NAAQS is implemented, enforced, and maintained in North Carolina. EPA is proposing to find that portions of North Carolina's infrastructure SIP submission, provided to EPA on August 23, 2013, satisfy certain infrastructure elements for the 2010 1-hour NO_2 NAAQS.

DATES: Written comments must be received on or before August 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0362 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Wong can be reached via telephone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On February 9, 2010, EPA published a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013.[1]

This action is proposing to approve North Carolina's infrastructure submission for the applicable requirements of the 2010 1-hour NO_2 NAAQS, with the exception of the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the state board requirements of 110(E)(ii). On November 3, 2015, EPA took final action to approve North Carolina's August 23, 2013, infrastructure SIP submission regarding the state board requirements of section 110(a)(2)(E)(ii), for the 2010 1-hour NO_2 NAAQS. *See* 80 FR 67645. Therefore, EPA is not proposing any action today pertaining to section 110(a)(2)(E)(ii). With respect to North Carolina's infrastructure SIP submission related to the provisions pertaining to the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J) and the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), EPA is not proposing any action at this time. For the aspects of North Carolina's submittal proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that North Carolina's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2010 1-hour NO_2 NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)." [2]

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[1] In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Unless otherwise indicated, the Title 15A regulations of the North Carolina Administrative Code ("15A NCAC") cited throughout this rulemaking have either been approved, or submitted for approval into North Carolina's federally-approved SIP. The North Carolina General Statutes ("NCGS") cited throughout this rulemaking, however, are not approved into the North Carolina SIP unless otherwise indicated.

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources [3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas [4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting Fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from North Carolina that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 1-hour NO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

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[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to this proposed rulemaking.

[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] *See, e.g.,* "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

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[8] *See, e.g.,* "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 fine particulate matter ($PM_{2.5}$) NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II). Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

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[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

IV. What is EPA's analysis of how North Carolina addressed the elements of the sections 110(a)(1) and (2) "Infrastructure" provisions?

North Carolina's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. These requirements are met through several North Carolina Administrative Code (NCAC) regulations. Specifically, 15A NCAC 2D .0500 *Emission Control Standards* establishes emission limits for NO_2. The following rules address additional control measures, means and techniques: 15A NCAC 2D .0600 *Monitoring: Recordkeeping: Reporting,* and 15A NCAC 2D .2600 *Source Testing.* In addition, NCGS 143–215.107(a)(5), *Air quality standards and classifications,* provides the North Carolina Environmental Management Commission (EMC) with the statutory authority, "To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards." EPA has made the preliminary determination that the cited provisions are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance for the 2010 1-hour NO_2 NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[18]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) Monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. NCGS 143–215.107(a)(2), *Air quality standards and classifications,* provides the EMC with the statutory authority "To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State."

Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, and includes the annual ambient monitoring network design plan and a certified evaluation of the state's ambient monitors and auxiliary support equipment.[19] The latest monitoring network plan for North Carolina was submitted to EPA on July 23, 2015, and on November 19, 2015, EPA approved this plan. North Carolina's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0362.

NCGS 143–215.107(a)(2), EPA regulations, along with North Carolina's Ambient Air Monitoring Network Plan, provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. EPA has made the preliminary determination that North Carolina's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2010 1-hour NO_2 NAAQS.

3. 110(a)(2)(C) *Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). To meet these obligations, North Carolina cited the following regulations: 15A NCAC 2D. 0500 *Emissions Control Standards;* 15A NCAC 2D. 0530 *Prevention of Significant Deterioration;* 15A NCAC 2D. 0531 *Sources in Nonattainment Areas;* 15A NCAC 2Q .0300 *Construction Operation Permits;* and 15A NCAC 2Q .0500 *Title V Procedures.* Collectively, these regulations enable North Carolina to regulate sources contributing to the 2010 1-hour NO_2 NAAQS through enforceable permits. North Carolina also cited to the following statutory provisions as supporting this element: NCGS 143–215.108, *Control of sources of air pollution; permits required;* NCGS 143–215.107(a)(7), *Air quality standards and classifications;* and NCGS 143–215.6A, 6B, and 6C, *Enforcement procedures: civil penalties, criminal penalties,* and *injunctive relief.*

In this action, EPA is proposing to approve North Carolina's infrastructure SIP for the 2010 1-hour NO_2 NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP for enforcement of NO_2 emissions controls and measures and the regulation of minor sources and modifications to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas.

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[17] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[18] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." See 80 FR 33840.

[19] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

Enforcement: NC DAQ's above-described, SIP-approved regulations provide for enforcement of NO_2 emission limits and control measures through enforceable permits. In addition, North Carolina cited NCGS 143–215.6A, 6B, and 6C, *Enforcement procedures: civil penalties, criminal penalties,* and *injunctive relief,* which provides NC DENR with the statutory authority to seek civil and criminal penalties, and injunctive relief to enforce air quality rules.

Preconstruction PSD Permitting for Major Sources: With respect to North Carolina's infrastructure SIP submission related to the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), EPA is not proposing any action today regarding these requirements and instead will act on this portion of the submission in a separate action.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2010 1-hour NO_2 NAAQS. Regulation 15A NCAC 2Q .0300 *Construction Operation Permits* governs the preconstruction permitting of minor modifications and construction of minor stationary sources.

EPA has made the preliminary determination that North Carolina's SIP is adequate for enforcement of control measures and regulation of minor sources and construction or modifications related to the 2010 1-hour NO_2 NAAQS.

4. 110(a)(2)(D)(i) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4"). With respect to North Carolina's infrastructure SIP in relation to the interstate transport requirements of section 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II) (prongs 1 through 4), EPA is not proposing any action today regarding these requirements.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement. Regulations 15A NCAC 2D .0530, *Prevention of Significant Deterioration,* and 15A NCAC 2D .0531, *Sources of Nonattainment Areas,* provide how NCDAQ will notify neighboring states of potential impacts from new or modified sources consistent with the requirements of 40 CFR 51.166. These regulations require NC DAQ to provide an opportunity for a public hearing to the public, which includes state or local air pollution control agencies, "whose lands may be affected by emissions from the source or modification" in North Carolina. In addition, North Carolina does not have any pending obligation under sections 115 and 126 of the CAA. Accordingly, EPA has made the preliminary determination that North Carolina's SIP is adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour NO_2 NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve North Carolina's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to North Carolina's August 23, 2013, infrastructure SIP submission related to the state board requirements of section 110(a)(2)(E)(ii), EPA took final action to approve these provisions for the 2010 1-hour NO_2 NAAQS on November 3, 2015. *See* 80 FR 67645. EPA's rationale for today's proposal respecting sub-elements (i) and (iii) is described below.

To satisfy the requirements of sections 110(a)(2)(E)(i) and (iii), North Carolina's infrastructure SIP submission cites several regulations. Rule 15A NCAC 2Q. 0200, *Permit Fees,* provides the mechanism by which stationary sources that emit air pollutants pay a fee based on the quantity of emissions. State statutes NCGS 143–215.3, *General Powers of Commission and Department: Auxiliary Powers,* and NCGS 143–215.107(a)(1), *Air Quality Standards and Classifications,* provide the EMC with the statutory authority "[t]o prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State." NCGS 143–215.112, *Local air pollution control programs,* provides the EMC with the statutory authority "to review and have general oversight and supervision over all local air pollution control programs." North Carolina has three local air agencies located in Buncombe, Forsyth, and Mecklenburg Counties that implement the air program in these areas.

As further evidence of the adequacy of NCDAQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to North Carolina on April 19, 2016, outlining section 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to North Carolina can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0362. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. North Carolina satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2015, therefore North Carolina's grants were finalized and closed out. Collectively, these rules and commitments provide evidence that NC DAQ has adequate personnel, funding, and legal authority to carry out the State's implementation plan and related issues. EPA has made the preliminary determination that North Carolina has adequate resources and authority to satisfy sections 110(a)(2)(E)(i) and (iii), North Carolina has adequate resources for implementation of the 2010 1-hour NO_2 NAAQS.

7. 110(a)(2)(F) *Stationary source monitoring system:* Section 110(a)(2)(F) requires SIPs to meet applicable

requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. North Carolina's infrastructure submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis.

NC DAQ uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. North Carolina meets these requirements through 15A NCAC 2D .0604 *Exceptions to Monitoring and Reporting Requirements;* 15A NCAC 2D .0605 *General Recordkeeping and Reporting Requirements;* 15A NCAC 2D .0611 *Monitoring Emissions from Other Sources;* 15A NCAC 2D .0612 *Alternative Monitoring and Reporting Procedures;* 15A NCAC 2D .0613 *Quality Assurance Program;* and 15A NCAC 2D .0614 *Compliance Assurance Monitoring.* In addition, 15A NCAC 2D .0605(c) *General Recordkeeping and Reporting Requirements* allows for the use of credible evidence in the event that the NCDAQ Director has evidence that a source is violating an emission standard or permit condition, the Director may require that the owner or operator of any source submit to the Director any information necessary to determine the compliance status of the source. In addition, EPA is unaware of any provision preventing the use of credible evidence in the North Carolina SIP. Also, NCGS 143–215.107(a)(4), *Air quality standards and classifications,* provides the EMC with the statutory authority "To collect information or to require reporting from classes of sources which, in the judgment of the [EMC], may cause or contribute to air pollution."

Stationary sources are required to submit periodic emissions reports to the State by Rule 15A NCAC 2Q .0207 "Annual Emissions Reporting." North Carolina is also required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the AERR on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. North Carolina made its latest update to the 2011 NEI on December 5, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that North Carolina's SIP and practices are adequate for the stationary source monitoring systems related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve North Carolina's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency Powers:* Section 110(a)(2)(G) requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. North Carolina's infrastructure SIP submission cites 15A NCAC 2D .0300, *Air Pollution Emergencies,* as identifying air pollution emergency episodes and preplanned abatement strategies, and provides the means to implement emergency air pollution episode measures. Under NCGS 143–215.3(a)(12), *General powers of Commission and Department; auxiliary powers,* if NC DENR finds that such a "condition of . . . air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department [NC DENR] with the concurrence of the Governor, shall order persons causing or contributing to the . . . air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes." In addition, NCGS 143–215.3(a)(12) provides NC DENR with the authority to declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. This statute also allows, in the absence of a generalized condition of air pollution, should the Secretary find "that the emissions from one or more air contaminant sources . . . is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants . . . or to take such other measures as are, in his judgment, necessary." EPA has made the preliminary determination that North Carolina's SIP submission is adequate to satisfy the emergency powers obligations of the 2010 1-hour NO_2 NAAQS.

9. 110(a)(2)(H) *Future SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. NC DAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in North Carolina. NCGS 143–215.107(a)(1) and (a)(10) grant NC DAQ the authority to prepare and develop, after proper study, a comprehensive plan for the prevention of air pollution and implement the CAA, respectively. These provisions also provide NC DAQ the ability and authority to respond to calls for SIP revisions, and North Carolina has provided a number of SIP revisions over the years for implementation of the NAAQS. In addition, State regulation 15A NCAC 2D .2401(d) states that "The EMC may specify through rulemaking a specific emission limit lower than that established under this rule for a specific source if compliance with the lower emission limit is required to attain or maintain the ambient air quality standard for ozone or $PM_{2.5}$ or any other ambient air quality standard in Section 15A NCAC 2D .0400." EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to

the 2010 1-hour NO_2 NAAQS when necessary.

10. 110(a)(2)(J) *Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve North Carolina's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127, and the visibility requirements. With respect to North Carolina's infrastructure SIP submission related to the preconstruction PSD permitting, EPA is not proposing any action today regarding these requirements and instead will act on these portions of the submission in a separate action. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and federal land managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Rules 15A NCAC 2D .0531, *Sources in a Nonattainment Areas,* 2D .1600, *General Conformity,* 2D .2000, *Transportation Conformity,* along with the State's Regional Haze Implementation Plan, (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. North Carolina adopted state-wide consultation procedures for the implementation of transportation conformity. Implementation of transportation conformity as outlined in the consultation procedures requires NC DAQ to consult with Federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. The Regional Haze SIP provides for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate consultation with government officials related to the 2010 1-hour NO_2 NAAQS when necessary.

Public notification (127 public notification): Rule 15A NCAC 2D .0300 *Air Pollution Emergencies* provides North Carolina with the authority to declare an emergency and notify the public accordingly when it finds a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Additionally, the NC DAQ has the North Carolina Air Awareness Program which is a program to educate the public on air quality issues and promote voluntary emission reduction measures. The NC DAQ also features a Web page providing ambient monitoring information regarding current and historical air quality across the State at *http://www.ncair.org/monitor/.* North Carolina participates in the EPA AirNOW program, which enhances public awareness of air quality in North Carolina and throughout the country. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2010 1-hour NO_2 NAAQS when necessary for the public notification element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. NC DENR referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so NC DENR does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that North Carolina's infrastructure SIP submission is approvable for the visibility protection element of section 110(a)(2)(J) related to the 2010 1-hour NO_2 NAAQS and that North Carolina does not need to rely on its regional haze program to satisfy this element.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. This infrastructure requirement is met through emissions data collected through 15A NCAC 2D .0600 *Monitoring: Recordkeeping: Reporting* (authorized under NCGS 143–215.107(a)(4)), which provides information to model potential impact of major and some minor sources. 15A NCAC 2D .0530 *Prevention of Significant Deterioration* and 15A NCAC 2D .0531 *Sources in Nonattainment Areas* require that air modeling be conducted in accordance with 40 CFR part 51, Appendix W, *Guideline on Air Quality Models.* NCGS 143–215.107(a) also provides authority for the EMC to determine by means of field sampling and other studies, the degree of air contamination and air pollution in the State. These regulations demonstrate that North Carolina has the authority to perform air quality modeling and to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2010 1-hour NO_2 NAAQS. The NC DAQ currently has personnel with training and experience to conduct source-oriented dispersion modeling that would likely be used in NO_2 NAAQS applications with models approved by EPA. Additionally, North Carolina participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2010 1-hour NO_2 NAAQS, for the Southeastern states. Taken as a whole, North Carolina's air quality regulations and practices demonstrate that NC DAQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS has been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2010 1-hour NO_2 NAAQS when necessary.

12. 110(a)(2)(L) *Permitting fees:* Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not

including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

To satisfy these requirements, North Carolina's infrastructure SIP submission cites Regulation 15A NCAC 2Q .0200 *Permit Fees*, which requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a sufficient fee to cover the costs of the permitting program. Additionally, North Carolina has a fully approved title V operating permit program at 15A NCAC.0500 *Emissions Control Standards* and 2Q .0500, *Title V Procedures*,[20] which include provisions to implement and enforce PSD and NNSR permits once Title V permits have been issued. The fees collected under 15A NCAC 2Q .0200 also support this activity. NCGS 143–215.3, *General powers of Commission and Department; auxiliary Powers*, provides authority for NC DAQ to require a processing fee in an amount sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. EPA has made the preliminary determination that North Carolina's SIP and practices adequately provide for permitting fees related to the 2010 1-hour NO_2 NAAQS, when necessary.

13. 110(a)(2)(M) *Consultation/participation by affected local entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Rule 15A NCAC 2Q .0530, *Prevention of Significant Deterioration*, requires that the NCDAQ notify the public, including affected local entities, of PSD permit applications and associated information related to PSD permits, and the opportunity for comment prior to making final permitting decisions. NCGS 150B–21.1 and 150B–21.2 authorize and require NCDAQ to advise, consult, cooperate and enter into agreements with other agencies of the state, the Federal government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the Department. Also, Rule 15A NCAC 2D .2000 *Transportation Conformity* requires consultation with all affected partners to be implemented for transportation conformity determinations. Furthermore, NC DAQ has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP, Regional Haze Implementation Plan, and the 8-Hour Ozone Attainment Demonstration for the North Carolina portion of the Charlotte-Gastonia-Rock Hill NC–SC nonattainment area. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour NO_2 NAAQS when necessary.

V. Proposed Action

EPA is proposing to approve that portions of NCDAQ's infrastructure SIP submission, submitted August 23, 2013, for the 2010 1-hour NO_2 NAAQS, has met the above described infrastructure SIP requirements. EPA is proposing to approve these portions of North Carolina's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS because these aspects of the submission are consistent with section 110 of the CAA. The PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), will not be addressed by EPA at this time. EPA has already taken action to approve North Carolina's infrastructure SIP submission related to section 110(a)(2)(E)(ii) for the 2010 NO_2 NAAQS.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 8, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–17071 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

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[20] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0015; A–1–FRL–9949–16–Region 1]

Air Plan Approval; RI; Regional Haze Five Year Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island on January 7, 2015. This SIP revision includes Rhode Island's regional haze progress report and adequacy determination for the first regional haze implementation period. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before August 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2015–0015 at *http://www.regulations.gov,* or via email to *arnold.anne@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Anne K. McWilliams, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone (617) 918–1697, facsimile (617) 918–0697, email *mcwilliams.anne@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: July 5, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016–16940 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0756; FRL–9949–27–Region 4]

Air Plan Approval/Disapproval; Alabama Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part and disapprove in part portions of the April 23, 2013, and December 9, 2015, update State Implementation Plan (SIP) submissions, submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), for inclusion into the Alabama SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. ADEM certified that the Alabama SIP contains provisions that ensure the 2010 1-hour NO_2 NAAQS is implemented, enforced, and maintained in Alabama. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, and visibility in other states, for which EPA is proposing no action through this notice, and with the exception of the provisions respecting state boards, for which EPA is proposing disapproval, EPA is proposing to approve Alabama's infrastructure SIP submissions provided to EPA on April 23, 2013, and updated on December 9, 2015, as satisfying the required infrastructure elements for the 2010 NO_2 NAAQS.

DATES: Written comments must be received on or before August 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0756 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8726. Mr. Wong can be reached via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 9, 2010, EPA published a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Sections 110(a)(2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 NO_2 NAAQS to EPA no later than January 22, 2013.[1]

This action is proposing to approve Alabama's infrastructure SIP submissions for the applicable requirements of the 2010 1-hour NO_2 NAAQS, with the exception of the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of (D)(i), and (J), the interstate transport provisions of section 110(a)(2)(D)(i), (prongs 1, 2 and 4), and the state board requirements of section 110(a)(2)(E)(ii). On March 18, 2015, EPA approved Alabama's April 23, 2013, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i) and (J) for the 2010 1-hour NO_2 NAAQS. *See* 80 FR 14019.[2] Therefore, EPA is not proposing any action today pertaining to sections 110(a)(2)(C), prong 3 of D(i) and (J). Additionally, today, EPA is not taking action related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of prongs 1 and 2 of section 110(a)(2)(D)(i), and prong 4 of (D)(i). With respect to Alabama's infrastructure SIP submissions related to section 110(a)(2)(E)(ii) requirements respecting the section 128 state board requirements, EPA is proposing to disapprove this element of Alabama's submissions in this rulemaking. For the aspects of Alabama's submittals proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that Alabama's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2010 NO_2 NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below[3] and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)."

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[4]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[5]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submissions from Alabama that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

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[1] In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "ADEM Admin. Code r." indicates that the cited regulation has been approved into Alabama's federally-approved SIP. The term "Ala. Code" refers to Alabama state statutes, which, unless otherwise indicated, are not a part of the federally-approved SIP.

[2] ADEM clarified that its December 9, 2015, submission was not intended to address the PSD requirements that were approved by EPA on March 18, 2015. *See www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0756.

[3] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[4] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[5] As mentioned above, this element is not relevant to today's proposed rulemaking.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[6] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[7] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[8] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[9] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[10]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[11]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

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[6] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[7] See, *e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[9] See, *e.g.*, "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[10] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[11] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[12] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[13] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[14] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including GHGs. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[15] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

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[12] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[13] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[14] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[18]

IV. What is EPA's analysis of how Alabama addressed the elements of the sections 110(a)(1) and (2) "infrastructure" provisions?

Alabama's infrastructure submissions address the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Alabama's SIP are relevant to air quality control. The regulations described below have been federally approved in the Alabama SIP and include enforceable emission limitations and other control measures for activities that contribute to NO_2 concentrations in the ambient air and provide ADEM the authority to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA. ADEM Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* authorizes ADEM to adopt rules for the control of air pollution in order to comply with NAAQS, including those necessary to obtain EPA approval under section 110 of the CAA. ADEM Admin. Code r. 335–3–1–.06—*Compliance Schedule,* sets the schedule for the State's Air Pollution Control rules and regulations to be consistent with the requirements of the CAA. ADEM Admin. Code r. 335–3–1–.05—*Sampling and Testing Methods,* details the authority and means with which ADEM can require testing and emissions verification. EPA has made the preliminary determination that the provisions contained in these regulations satisfy section 110(a)(2)(A) for the 2010 1-hour NO_2 NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[19]

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[15] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[16] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[17] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* SIPs are required to provide for the establishment and operation of ambient air quality monitors; the compilation and analysis of ambient air quality data; and the submission of these data to EPA upon request. These requirements are met through ADEM Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* ADEM Admin. Code r. 335–3–1–.05—*Sampling and Testing Methods,* and ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting.* These SIP-approved rules along with Alabama's Ambient Air Monitoring Network Plan, provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the state's ambient monitors and auxiliary support equipment.[20] The latest monitoring network plan for Alabama was submitted to EPA on July 22, 2015, and on November 19, 2015, EPA approved this plan. Alabama's approved 2015 monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0756. EPA has made the preliminary determination that Alabama's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2010 1-hour NO$_2$ NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). ADEM's 2010 1-hour NO$_2$ NAAQS infrastructure SIP submissions cited SIP provisions to address these requirements. Specifically, the submissions cited ADEM Admin. Code r 335–3–14–.01—*"General Provisions,"* 335–3–14–.02,—"Permit Procedure", 334–3–14–.03—*"Standards for Granting Permits",* 335–3–14–.04—*"Prevention of Significant Deterioration in Permitting"* and 335–3–14–.05—*"Air Permits Authorizing Construction in or Near Nonattainment Areas".* As discussed further below, in this action EPA is only proposing to approve the enforcement, and the regulation of minor sources and minor modifications aspects of Alabama's section 110(a)(2)(C) infrastructure SIP submissions.

Enforcement: ADEM's above-described, SIP-approved regulations provide for enforcement of NO$_2$ emission limits and control measures through enforceable permits for new or modified stationary sources. Note also that ADEM has authority to issue enforcement orders and assess penalties (*see* Code sections 22–22A–5, 22–28–10 and 22–28–22).

PSD Permitting for Major Sources: With respect to Alabama's April 23, 2013, infrastructure SIP submission related to the PSD permitting requirements of major sources for section 110(a)(2)(C), EPA took final action to approve these provisions for the 2010 1-hour NO$_2$ NAAQS on March 18, 2015. *See* 80 FR 14019.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source preconstruction program that regulates emissions of the 2010 1-hour NO$_2$ NAAQS. ADEM Admin. Code r 334–3–14–.03—*"Standards for Granting Permits"* governs the preconstruction permitting of minor modifications and construction of minor stationary sources. EPA has made the preliminary determination that Alabama's SIP and practices are adequate for program enforcement of control measures and regulation of minor sources and modifications related to the 2010 1-hour NO$_2$ NAAQS.

4. 110(a)(2)(D) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—prongs 1 through 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) because Alabama's 2010 1-hour NO$_2$ NAAQS infrastructure submissions did not address prongs 1 and 2.

110(a)(2)(D)(i)(II)—prong 3: With respect to Alabama's infrastructure SIP submission related to the interstate transport requirements for PSD of section 110(a)(2)(D)(i)(II) (prong 3), EPA took final action to approve Alabama's April 23, 2013, infrastructure SIP submission regarding prong 3 of D(i) for the 2010 1-hour NO$_2$ NAAQS on March 18, 2015. *See* 80 FR 14019.

110(a)(2)(D)(i)(II)—prong 4: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to Alabama's 2010 1-hour NO_2 NAAQS infrastructure submissions in a separate rulemaking.

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[19] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

[20] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. ADEM Admin. Code r. 335–3–14–.04—*Prevention of Significant Deterioration in Permitting* describes how Alabama notifies neighboring states of potential emission impacts from new or modified sources applying for PSD permits. This regulation requires ADEM to provide an opportunity for a public hearing to the public, which includes State or local air pollution control agencies, "whose lands may be affected by emissions from the source or modification" in Alabama. Additionally, Alabama does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that Alabama's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour NO_2 NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Alabama's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to 110(a)(2)(E)(ii) (regarding state boards), EPA is proposing disapproval of this sub-element. EPA's rationale respecting each sub-element is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), ADEM's infrastructure submissions demonstrate that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards, general policies, a system of permits, fee schedules for the review of plans, and other planning needs as authorized at Ala. Code section 22–28–11 and section 22–28–9. Ala. Code section 22–28–23 does not allow the local programs to be less strict than the Alabama SIP/regulations and allows for oversight from the State. As evidence of the adequacy of ADEM's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Alabama on April 19, 2016, outlining 105 grant commitments and current status of these commitments for fiscal year 2015. The letter EPA submitted to Alabama can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0431. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, Alabama's grants were finalized and closed out. Alabama's funding is also met through the state's title V fee program at ADEM Admin. Code r. 335–1–7—*Air Division Operating Permit Fees*[21] and ADEM Admin. Code r. 335–1–6—*Application Fees.*[22] EPA has made the preliminary determination that Alabama has adequate resources for implementation of the 2010 1-hour NO_2 NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. After reviewing Alabama's SIP, EPA has made the preliminary determination that the State's implementation plan does not contain provisions to comply with section 128 of the Act, and thus Alabama's April 23, 2013, and December 9, 2015, infrastructure SIP submissions do not meet the requirements of the Act. While Alabama has state statutes that may address, in whole or part, requirements related to state boards at the state level, these provisions are not included in the SIP as required by the CAA. Based on an evaluation of the federally-approved Alabama SIP, EPA is proposing to disapprove Alabama's certification that its SIP meets the requirements of 110(a)(2)(E)(ii) of the CAA for the 2010 1-hour NO_2 NAAQS. The submitted provisions which purport to address 110(a)(2)(E)(ii) are severable from the other infrastructure elements. Therefore, EPA is proposing to disapprove those provisions which relate only to sub-element 110(a)(2)(E)(ii).

7. 110(a)(2)(F) *Stationary Source Monitoring System and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. ADEM's infrastructure SIP submissions describe the establishment of requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. The Alabama infrastructure submissions also describe how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. Alabama meets these requirements through ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting,* and 335–3–12—*Continuous Monitoring Requirements for Existing Sources.* ADEM Admin. Code r. 335–3–1–.04, details how sources are required as appropriate to establish and maintain records; make reports; install, use, and maintain such monitoring equipment or methods and provide periodic emission reports as the regulation requires. These reports and records are required to be compiled, and submitted on forms furnished by the State. Additionally, ADEM Admin. Code r. 335–3–12–.02 requires owners and operators of emissions sources to "install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring the pollutants."[23]

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[21] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

[22] This regulation has not been incorporated into the federally-approved SIP.

[23] ADEM Admin. Code r. 335–3–12–.02 establishes that data reporting requirements for sources required to conduct continuous monitoring in the state should comply with data reporting requirements set forth at 40 CFR 51, Appendix P. Section 40 CFR 51, Appendix P includes that the averaging period used for data reporting should be established by the state to correspond to the averaging period specified in the emission test

ADEM Admin. Code r. 335–3–1–.13—*Credible Evidence,* makes allowances for owners and/or operators to utilize "any credible evidence or information relevant" to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the Alabama SIP.

Additionally, Alabama is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, SO_2, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Alabama made its latest update to the 2011 NEI on January 7, 2013. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Alabama's SIP and practices are adequate for the stationary source monitoring systems related to the 1-hour NO_2 NAAQS.

8. 110(a)(2)(G) *Emergency Powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. ADEM Admin. Code r. 335–3–2—*Air Pollution Emergency,* provides for the identification of air pollution emergency episodes, episode criteria, and emissions reduction plans. Alabama's compliance with section 303 of the CAA and adequate contingency plans to implement such authority is also met at Ala. Code section 22–28–21 *Air Pollution Emergencies.* Ala. Code section 22–28–21 provides ADEM the authority to order "person or persons responsible for the operation or operations of one or more air contaminants sources" causing "imminent danger to human health or safety in question to reduce or discontinue emissions immediately." The order establishes a hearing no later than 24-hours after issuance before the Environmental Management Commission which can affirm, modify or set aside the Director's order. Additionally, the Governor can, by proclamation, declare, as to all or any part of said area, that an air pollution emergency exists and exercise certain powers in whole or in part, by the issuance of an order or orders to protect the public health. Under Ala. Code sections 22–28–3(a) and 22–28–10(2), ADEM also has the authority to issue such orders as may be necessary to effectuate the purposes of the Alabama Pollution Control Act, which includes achieving and maintaining such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the social development of this state and facilitate the enjoyment of the natural attractions of the state. EPA has made the preliminary determination that Alabama's SIP and state laws are adequate for emergency powers related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submissions with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. ADEM is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Alabama has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. ADEM Admin. Code r. 335–1–1–.03—*Organization and Duties of the Commission,*[24] provides ADEM with the authority to establish, adopt, promulgate, modify, repeal and suspend rules, regulations, or environmental standards which may be applicable to Alabama or "any of its geographic parts." Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* provides ADEM the authority to amend, revise, and incorporate the NAAQS into its SIP. EPA has made the preliminary determination that Alabama adequately demonstrates a commitment to provide future SIP revisions related to the 2010 1-hour NO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submissions with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation with Government Officials, Public Notification, and PSD and visibility Protection:* EPA is proposing to approve Alabama's infrastructure SIP for the 2010 1-hour NO_2 NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127; and visibility protection requirements of part C of the Act. With respect to Alabama's infrastructure SIP submission related to the preconstruction PSD permitting requirements of section 110(a)(2)(J), EPA took final action to approve Alabama's April 23, 2013, 2010 1-hour NO_2 NAAQS infrastructure SIP for these requirements on March 18, 2015. *See* 80 FR 14019. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and federal land managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. ADEM Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* as well as its Regional Haze Implementation Plan (which allows for continued consultation with appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions

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method used to determine compliance with an emission standard for the pollutant/source category in question.

[24] This regulation has not been incorporated into the federally-approved SIP.

might be affected by SIP development activities. Specifically, Alabama adopted state-wide consultation procedures for the implementation of transportation conformity, which are used for development of mobile inventories for SIPs. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate consultation with government officials related to the 2010 1-hour NO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submissions with respect to section 110(a)(2)(J) consultation with government officials.

Public notification (127 public notification): ADEM Admin. Code r. 335–3–14–.01(7)—*Public Participation,* ADEM Admin. Code r. 335–3–14–.05(13)—*Public Participation,* and Ala. Code section 22–28–21—*Air Pollution Emergencies* provides for public notification and resolution when air pollution episodes occur. Furthermore, ADEM has several public notice mechanisms in place to provide daily air quality forecasts for ozone and fine particulate matter to the public, including: EPA AirNow, ADEM Web site postings and customized emails through Enviroflash for registered individuals. When air quality is expected to be poor, an air quality alert is issued for a city, the local National Weather Service (NWS) office is alerted and the forecast is posted on the NWS Web site. Additionally, for some cities in Alabama (*e.g.,* Birmingham), the county planning organizations are alerted and the forecast is distributed to the media, and other interested groups. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2010 1-hour NO_2 NAAQS when necessary.

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. ADEM referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so ADEM does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that Alabama's infrastructure SIP submissions are approvable for the visibility protection element of section 110(a)(2)(J) in related to the 2010 1-hour NO_2 NAAQS and that Alabama does not need to rely on its regional haze program to address this element.

11. 110(a)(2)(K) *Air Quality and Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. ADEM Admin. Code r 335–3–1–.04—*Monitoring, Records, and Reporting* and 335–3–14–.04—*Prevention of Significant Deterioration Permitting,* specifically sub-paragraph (11)—*Air Quality Models* specify that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W "Guideline on Air Quality Models". ADEM Admin. Code r 335–3–1–.04—*Monitoring, Records, and Reporting* details how sources are required as appropriate to establish and maintain records; make reports; install, use, and maintain such monitoring equipment or methods and provide periodic emission reports as the regulation requires. These reports and records are required to be compiled, and submitted on forms furnished by the State. These provisions demonstrate that Alabama has the authority to provide relevant data for the purpose of predicting the effect of pollutants on ambient air quality of the 2010 1-hour NO_2 NAAQS. Additionally, Alabama participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2010 1-hour NO_2 NAAQS, for the southeastern states. Taken as a whole, Alabama's air quality regulations and practices demonstrate that ADEM has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS had been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submissions with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* This element necessitates that the SIP require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

ADEM Admin. Code r. 335–1–6—*Application Fees*[25] requires ADEM to charge permit-specific fees to the applicant/source as authorized by State legislation and Ala. Code section 22–22A–5. ADEM assures its permitting fee structure is sufficient for the reasonable cost of reviewing and acting upon PSD and nonattainment new source review (NNSR) permits. Additionally, Alabama has a fully approved title V operating permit program at ADEM Admin. Code r. 335–1–7—*Air Division Operating Permit Fees,*[26] that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Alabama's SIP and practices adequately provide for permitting fees related to the 2010 1-hour NO_2 NAAQS, when necessary. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submissions with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation and Participation by Affected Local Entities:* This element requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. ADEM Administrative Code 335–3–17–.01—*Transportation Conformity* and the interagency consultation process as directed by Alabama's approved Conformity SIP and 40 CFR 93.112 provide for consultation with local groups. More specifically, Alabama

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[25] This regulation has not been incorporated into the federally-approved SIP.

[26] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

adopted consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. These consultation and participation procedures have been approved in the Alabama SIP as the non-regulatory provisions: "Alabama Interagency Transportation Conformity Memorandum of Agreement" and "Conformity SIP for Birmingham and Jackson County." These provisions were approved on May 11, 2000, and March 26, 2009, respectively. *See* 65 FR 30362 and 74 FR 13118. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and are required to provide public involvement for their activities including the analysis demonstrating how they meet transportation conformity requirements. Additionally, Alabama has consulted with FLMs as a requirement of its regional haze SIP. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour NO_2 NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions pertaining to visibility protection requirements of section 110(a)(2)(D)(i)(II) (prong 4), and the state board requirements of section 110(a)(2)(E)(ii), EPA is proposing to approve that certain elements in Alabama's April 23, 2013, and December 9, 2015, SIP submissions for the 2010 1-hour NO_2 NAAQS have met the above-described infrastructure SIP requirements. EPA is proposing to disapprove section 110(a)(2)(E)(ii) of Alabama's infrastructure submissions because the State's implementation plan does not contain provisions to comply with section 128 of the Act, and thus Alabama's April 23, 2013, and December 9, 2015, infrastructure SIP submissions do not meet the requirements of the Act. The interstate transport requirements of section 110(a)(2)(D)(i)(II) (prong 4) will be addressed by EPA in a future action.

Under section 179(a) of the CAA, final disapproval of a submittal (or portion thereof) that addresses a requirement of a CAA Part D Plan or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call) starts a sanctions clock. The section 110(a)(2)(E)(ii) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D or a SIP call, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a federal implementation plan (FIP) no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 8, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–17053 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2014–0720; FRL–9949–29–Region 1]

Air Plan Approval; Massachusetts; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most elements of State Implementation Plan (SIP) submissions from Massachusetts regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 ozone, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). EPA is also proposing to conditionally approve three aspects of the Commonwealth's submittals. In addition, we are also proposing findings of failure to submit pertaining to various aspects of the

prevention of significant deterioration (PSD) requirements of infrastructure SIPs. Lastly, we are proposing to remove 40 CFR 52.1160 as legally obsolete.

The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before August 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2014–0720, at *http://www.regulations.gov,* or via email to *arnold.anne@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1046; *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. Additionally, the term "the Commonwealth" refers to the state of Massachusetts.

This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is the background of these SIP submissions?
  A. What Massachusetts SIP submissions does this rulemaking address?
  B. Why did the state make these SIP submissions?
  C. What is the scope of this rulemaking?
III. What guidance is EPA using to evaluate these SIP submissions?
IV. What is the result of EPA's review of these SIP submissions?
  A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures
  B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System
  C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
  i. Sub-Element 1: Enforcement of SIP Measures
  ii. Sub-Element 2: Preconstruction Program for Major Sources and Major Modifications
  iii. Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications
  D. Section 110(a)(2)(D)—Interstate Transport
  i. Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)
  ii. Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)
  iii. Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)
  iv. Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement
  v. Sub-Element 5: Section 110(a)(2)(D)(ii)—International Pollution Abatement
  E. Section 110(a)(2)(E)—Adequate Resources
  i. Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues
  ii. Sub-Element 2: State Board Requirements Under Section 128 of the CAA
  F. Section 110(a)(2)(F)—Stationary Source Monitoring System
  G. Section 110(a)(2)(G)—Emergency Powers
  H. Section 110(a)(2)(H)—Future SIP Revisions
  I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D
  J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection
  i. Sub-Element 1: Consultation With Government Officials
  ii. Sub-Element 2: Public Notification
  iii. Sub-Element 3: PSD
  iv. Visibility Protection
  K. Section 110(a)(2)(K)—Air Quality Modeling/Data
  L. Section 110(a)(2)(L)—Permitting Fees
  M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities
V. What action is EPA taking?
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What Massachusetts SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Massachusetts Department of Environmental Protection (MassDEP). The Commonwealth submitted its infrastructure State Implementation Plan (ISIP) for the 1997 ozone NAAQS on December 14, 2007, its ISIP for the 200b Pb NAAQS on December 4, 2012, and its ISIPs for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS on June 6, 2014.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ (Fine Particle) National Ambient Air Quality Standards" (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2009 Memo), followed by the October 14, 2011, "Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Memo). Most recently, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2) and address the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. What is the scope of this rulemaking?

EPA is proposing approval of most aspects of the SIP submissions from Massachusetts that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Additionally, we are proposing approval of a statute submitted by Massachusetts that supports the infrastructure SIP submittals, proposing conditional approval of certain aspects of the Commonwealth's submittals as discussed below, and proposing findings of failure to submit for a number of ISIP provisions that pertain to the State's PSD program.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of" a new or revised NAAQS. This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section 110(a)(2) includes the specific elements that "each such plan" must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources ("SSM" emissions) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final New Source Review (NSR) Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (*See* 79 FR 27241; May 13, 2014).

III. What guidance is EPA using to evaluate these SIP submissions?

EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate. Historically, EPA has elected to use non-binding guidance documents to make recommendations for states' development and EPA review of infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA guidance applicable to these infrastructure SIP submissions is embodied in several documents. Specifically, attachment A of the 2007 Memo (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo provides additional guidance for certain elements regarding the 2006 $PM_{2.5}$ NAAQS, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA's review of these SIP submissions?

Pursuant to section 110(a), and as noted in the 2011 Memo and the 2013 Memo, states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. MassDEP held a public hearing on the ISIP for the 2008 Pb NAAQS on June 12, 2012, and held a public hearing on the ISIPs for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS on September 6, 2013.

EPA is soliciting comment on our evaluation of the state's infrastructure SIP submissions in this notice of proposed rulemaking. Massachusetts provided detailed synopses of how various components of its SIP meet each of the requirements in section 110(a)(2) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, as applicable. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[1] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Massachusetts General Law (M.G.L.) c.21A, § 8, *Executive Office of Energy and Environmental Affairs Organization of Departments; powers, duties and functions,* creates and sets forth the powers and duties of the Department of Environmental Protection (MassDEP) within the Executive Office of Energy and Environmental Affairs. In addition, M.G.L. c.111, §§ 142A through 142N, which, collectively, are referred to as the *Massachusetts Pollution Control Laws,* provide MassDEP with broad authority to prevent pollution or contamination of the atmosphere and to prescribe and establish appropriate regulations. Furthermore, M.G.L. c.21A, § 18, *Permit applications and compliance assurance fees; timeline action schedules; regulations,* authorizes MassDEP to establish fees applicable to the regulatory programs it administers.

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[1] See, *e.g.*, EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964, 67034 (Nov. 12, 2008).

MassDEP has adopted numerous regulations within the Code of Massachusetts Regulations (CMR) in furtherance of the objectives set out by these statutes, including *310 CMR 4.00: Timely Action & Fee Schedule Regulations, 310 CMR 6.00, Ambient Air Quality Standards for the Commonwealth of Massachusetts,* and *310 CMR 7.00: Air Pollution Control Regulations.* For example, many SIP-approved State air quality regulations within 310 CMR 7.00 provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters that satisfy the requirements of the CAA section 110(a)(2)(A) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, including but not limited to *7.18, Volatile and Halogenated Organic Compounds, 7.19, Reasonably Available Control Technology (RACT) for Sources of NO_X,* and *7.29, Emission Standards for Power Plants.*

We note, however, that we are conditionally approving this element because the SIP-approved version of 310 CMR 7.00 uses the term "National Ambient Air Quality Standards (NAAQS)," but does not contain a definition for this term. Therefore, there is uncertainty as to which versions of the NAAQS the term incorporates. By letter dated June 14, 2016, Massachusetts committed to submitting for inclusion in the SIP, by a date no later than one year from conditional approval of Massachusetts' infrastructure submissions, a definition for NAAQS in 310 CMR 7.00 that would reflect the current versions of the various NAAQS we are proposing to act on in this rulemaking.

In recognition of the above, EPA proposes that Massachusetts has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, with the exception of the issue related to a definition of NAAQS in 310 CMR 7.00, for which we are proposing a conditional approval.

In addition to the above, we are proposing to remove as legally obsolete 40 CFR 52.1160, which was promulgated on January 24, 1995 (60 FR 4737). Section 52.1160 provides that "Massachusetts' adopted LEV [Low Emission Vehicle] program must be revised to the extent necessary for the state to comply with all aspects of the requirements of 40 CFR 51.120," a provision that was promulgated in the same action (60 FR 4736) and that required certain states to adopt the Ozone Transport Commission (OTC) LEV program or equivalent measures. (The OTC LEV program is based on California's LEV program and requires that only cleaner "LEV" cars be sold in the states in which it has been adopted). On March 11, 1997, however, the U.S. Court of Appeals for the District of Columbia Circuit vacated the provisions of 40 CFR 52.120. *See Virginia* v. *EPA,* 108 F.3d 1397. Nonetheless, the Commonwealth has adopted a Low Emission Vehicle Program based on California's LEV program (310 CMR 7.40), the latest version of which was approved into the SIP on December 23, 2002 (67 FR 78181). Because of the vacatur, EPA concludes that 40 CFR 52.1160 is obsolete and proposes to remove it from the CFR.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Under MGL c.111, §§ 142B to 142D, MassDEP operates an air monitoring network. EPA approved the state's most recent Annual Air Monitoring Network Plan for Pb, ozone, NO_2, and SO_2 on November 13, 2015. Furthermore, MassDEP populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that MassDEP has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and, (iii) permitting program for minor sources and minor modifications. A discussion of greenhouse gas (GHG) permitting and the "Tailoring Rule" [2] is included within our evaluation of the PSD provisions of the Commonwealth's submittals.

i. Sub-Element 1: Enforcement of SIP Measures

MassDEP staffs and implements an enforcement program pursuant to authorities provided within the following laws: M.G.L. c.111, § 2C, *Pollution violations; orders of department of environmental protection,* which authorizes MassDEP to issue orders enforcing pollution control regulations generally; M.G.L. c.111, §§ 142A through 142O, *Massachusetts Pollution Control Laws,* which, among other things, more specifically authorize MassDEP to adopt regulations to control air pollution, enforce such regulations, and issue penalties for non-compliance; and, M.G.L. c.21A, § 16, *Civil Administrative Penalties,* which provides additional authorizations for MassDEP to assess penalties for failure to comply with the Commonwealth's air pollution control laws and regulations. Moreover, SIP-approved regulations, such as 310 CMR 7.02(12)(e) and (f), provide a program for the enforcement of SIP measures. Accordingly, EPA proposes that Massachusetts has met this requirement of section 110(a)(2)(C) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

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[2] In EPA's April 28, 2011 proposed rulemaking for several states' infrastructure SIPs for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (See 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for several infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (See 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb, NO_X as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2008 Pb NAAQS.

ii. Sub-Element 2: Preconstruction Program for Major Sources and Major Modifications

Sub-element 2 of section 110(a)(2)(C) requires that states provide for the regulation of modification and construction of any stationary source as necessary to assure that the NAAQS are achieved, including a program to meet PSD and NNSR requirements. PSD applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS, and NNSR requires similar actions in nonattainment areas.

Massachusetts does not have an approved state PSD program and has made no submittals addressing the PSD sub-element of section 110(a)(2)(C). The Commonwealth has long been subject to a Federal Implementation Plan (FIP), however, and has implemented and enforced the federal PSD program through a delegation agreement. See 76 FR 31241; May 31, 2011. Accordingly, EPA is proposing a finding of failure to submit with respect to the PSD-related requirements of this sub-element for the 2010 NO_2 and 2010 SO_2 NAAQS.[3] *See* CAA section 110(c)(1). This finding, however, does not trigger any additional FIP obligation by the EPA under section 110(c)(1), because the deficiency is addressed by the FIP already in place. Moreover the state is not subject to mandatory sanctions solely as a result of this finding, because the SIP submittal deficiencies are neither with respect to a sub-element that is required under part D nor in response to a SIP call under section 110(k)(5) of the Act.

iii. Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA's most recent approval of the Commonwealth's minor NSR program occurred on April 5, 1995 (60 FR 17226). Since this date, Massachusetts and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

In summary, we are proposing to find that Massachusetts has met the enforcement related aspects of Section 110(a)(2)(C) discussed above within sub-element 1, and the preconstruction permitting requirements for minor sources discussed in sub-element 3, for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Also, we are proposing, pursuant to section 110(c)(1), to find that the state has failed to make required submissions related to major source preconstruction permitting for the 2010 NO_2 and 2010 SO_2 NAAQS for the reasons provided in sub-element 2 above.

D. Section 110(a)(2)(D)—Interstate Transport

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution that states must address. It covers the following 5 topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interfere with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the 4 prongs discussed below, 2 of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

i. Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as $PM_{2.5}$ or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, although it may be possible for a source in a state to emit Pb at a location and in such quantities that contribute significantly to nonattainment in, or interfere with maintenance by, any other state, EPA anticipates that this would be a rare situation (*e.g.,* sources emitting large quantities of Pb in close proximity to state boundaries). The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to Pb can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state.

Massachusetts' infrastructure SIP submission for the 2008 Pb NAAQS notes that there are no major sources of Pb emissions located in close proximity to any of the state's borders with neighboring states, or elsewhere in the state. Our review of data within our National Emissions Inventory (NEI) database confirms this, and also indicates that there is no group of sources anywhere within the state likely to emit enough Pb to cause ambient concentrations to approach the Pb NAAQS. Therefore, we propose that Massachusetts has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

Massachusetts' infrastructure SIP submission for the 2010 NO_2 NAAQS notes that Massachusetts sources do not contribute to non-attainment or maintenance in other states, given that all surrounding states are designated as "unclassifiable/attainment." This statement is accurate, and indeed there are no NO_2 nonattainment areas anywhere in the United States. 77 FR 9532 (Feb. 17, 2012). We examined the design values from NO_2 monitors in Massachusetts and neighboring states based on data collected between 2012 and 2014. In Massachusetts, the highest design value was 49 parts per billion (ppb)(versus the NO_2 standard of 100 ppb) at a monitor in Boston. The highest design value we found in a neighboring state was 58 ppb in Queens, NY. We believe that with the continued implementation of Massachusetts PSD FIP, and the Commonwealth's NSR regulations, the state's low monitored values of NO_2 will continue. In other words, the NO_2 emissions from Massachusetts are not expected to cause or contribute to a violation of the 2010 NO_2 NAAQS in another state, and these emissions are not likely to interfere with the maintenance of the 2010 NO_2 NAAQS in another state. Therefore, we propose that Massachusetts has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2010 NO_2 NAAQS.

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[3] EPA has previously issued findings of failure to submit infrastructure SIPs addressing the PSD-related requirements of section 110(a)(2) for the 1997 ozone NAAQS, 73 FR 16205 (Mar. 27, 2008), the 2008 ozone NAAQS, 78 FR 2882 (Jan. 15, 2013), and the 2008 Pb NAAQS, 78 FR 12961 (Feb. 26, 2013), and Massachusetts has made no additional submissions to address the PSD-related requirements for these NAAQS since those previous findings.

In today's rulemaking, we are not proposing to approve or disapprove Massachusetts' compliance with section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone, 2008 ozone, or 2010 SO_2 NAAQS, since the Commonwealth's SIP revisions upon which we are acting today do not include a submittal with respect to transport for sub-element 1, prongs 1 and 2 for these pollutants. Effective August 12, 2015, EPA found that Massachusetts, among a number of other states, had not made a complete good neighbor SIP submittal for the 2008 ozone NAAQS to meet the requirements of section 110(a)(2)(D)(i)(I). *See* 80 FR 39961 (July 13, 2015).

ii. Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. A state's infrastructure SIP submittal cannot be considered approvable for prong 3 unless EPA has issued final approval of the state's PSD SIP, or alternatively, has issued final approval of a SIP that EPA has otherwise found adequate to prohibit interference with other states' measures to prevent significant deterioration of air quality.

As discussed under element C above, Massachusetts is currently subject to a PSD FIP. Therefore, we are proposing a finding of failure to submit for prong 3 of 110(a)(2)(D)(i)(II) with respect to the PSD requirement, in the same manner as discussed under element C above. However, this finding will not trigger any sanctions or additional FIP obligation.

Under prong 3 of 110(a)(2)(D)(i)(II), EPA also reviews the potential for in-state sources not subject to PSD to interfere with PSD in an attainment or unclassifiable area of another state. EPA guidance recommends that a "fully approved nonattainment [new source review (NNSR)] program with respect to any previous NAAQS may generally be considered by the EPA as adequate for purposes of meeting this requirement of prong 3 with respect to sources and pollutants subject to such program." 2013 Guidance at 32. EPA last approved the Commonwealth's NNSR program on October 27, 2000. 65 FR 64360. Because Massachusetts is located within the Ozone Transport Region, *see* CAA § 184(a), 42 U.S.C. 7511c(a), sources emitting 50 tpy or more of NO_X or VOCs are subject to the requirements that would be applicable to major stationary sources if the area were classified as a moderate nonattainment area, CAA §§ 182(f)(1), 184(b)(2), 42 U.S.C. 7511a, 7511c. In other words, even if located in an area designated attainment for ozone, such sources are not subject to PSD, but rather, are to be subject to NNSR. Massachusetts' SIP-approved NNSR regulations, however, apply by their terms only to nonattainment areas,[4] meaning that sources of 50 tpy or more of VOCs or NO_X in much of Massachusetts are not covered by either the PSD FIP or the state's EPA-approved NNSR program and, thus, the state has not shown that it has met this requirement of prong 3. The Commonwealth has promulgated and implements NNSR regulations, however, that make the state's NNSR program applicable to such sources regardless of area designation. In a letter dated June 14, 2016, the Commonwealth committed to submitting for inclusion in the SIP, by a date no later than one year from conditional approval of Massachusetts' infrastructure submissions, the necessary provisions that would make its EPA-approved NSSR program applicable to such sources. Accordingly, we propose to conditionally approve Massachusetts' submittals for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS for this aspect of prong 3.

iii. Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

The Commonwealth's Regional Haze SIP was approved by EPA on September 13, 2013. See 78 FR 57487. Accordingly, EPA proposes that Massachusetts has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

iv. Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

One aspect of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. As mentioned elsewhere in this notice, Massachusetts is currently subject to a PSD FIP and it did not make submittals addressing the PSD-related requirements of section 126(a). Therefore, we are proposing to make a finding of failure to submit for section 110(a)(2)(D)(ii) regarding PSD-related notice of interstate pollution with respect to the 2010 NO_2 and 2010 SO_2 NAAQS.[5] This finding does not trigger any additional FIP obligation by the EPA under section 110(c)(1), because the federal PSD rules address the notification issue. *See* 40 CFR 52.21(q), 124.10(c)(vii); *see also id.* § 52.1165. Nor does the finding trigger any sanctions. Massachusetts has no obligations under any other provision of section 126.

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[4] At the time EPA last approved Massachusetts' NNSR regulations (October 27, 2000; 65 FR at 64361), the Western Massachusetts area was nonattainment for the one-hour ozone standard, and the Eastern Massachusetts area was attaining the standard, but destined to become nonattainment as of January 16, 2001, upon EPA's reinstatement of the one-hour ozone NAAQS for that area.

[5] As discussed earlier, *supra* n.3, EPA has previously issued findings of failure to submit for Massachusetts for the PSD-related requirements of 110(a)(2)(D)(ii) for the 1997 ozone, 2008 ozone, and 2008 Pb NAAQS.

v. Sub-Element 5: Section 110(a)(2)(D)(ii)—International Pollution Abatement

One portion of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Massachusetts does not have any pending obligations under section 115 for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Therefore, EPA is proposing that the Commonwealth has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Additionally, section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring adequate implementation of SIP obligations with respect to relevant NAAQS. This last sub-element, however, is inapplicable to this action, because Massachusetts does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

Massachusetts, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Massachusetts General Laws c. 111, sections 142A to 142N, provide MassDEP with the authority to carry out the state's implementation plan. The Massachusetts SIP, as originally submitted in 1971 and subsequently amended, provides descriptions of the staffing and funding necessary to carry out the plan. In the submittals, MassDEP provides assurances that it has adequate personnel and funding to carry out the SIP during the five years following infrastructure SIP submission and in future years. Additionally, the Commonwealth receives CAA section 103 and 105 grant funds through Performance Partnership agreements and provides state matching funds, which together enable Massachusetts to carry out its SIP requirements. In light of the foregoing, EPA proposes that Massachusetts has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128(a) of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

Massachusetts does not have a state board that approves permits or enforcement orders under the CAA. Instead, permits and enforcement orders are approved by the Commissioner of MassDEP. Thus, Massachusetts is not subject to the requirements of paragraph (a)(1) of section 128. As to the conflict of interest provisions of section 128(a)(2), Massachusetts has cited to M.G.L. c. 268A, sections 6 and 6A of the Commonwealth's Conflict of Interest law in its June 6, 2014 infrastructure SIP submittal for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS and requested that these sections be included in the SIP to satisfy this infrastructure SIP requirement.[6] Pursuant to these state provisions, state employees in Massachusetts, including the head of an executive agency with authority to approve air permits or enforcement orders, are required to disclose potential conflicts of interest to, among others, the state ethics commission. We are proposing to find that M.G.L. c. 268A, sections 6 and 6A satisfy the requirements of section 110(a)(2)(E)(ii) of the Clean Air Act, to approve them into the Massachusetts SIP, and, consequently, to approve the Commonwealth's ISIP submittals for section 110(a)(2)(E)(ii) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Pursuant to M.G.L. c.111, sections 142A to 142D, MassDEP has the necessary authority to maintain and operate air monitoring stations, and coordinates with EPA in determining the types and locations of ambient air monitors across the state. The Commonwealth uses this authority to collect information on air emissions from sources in the state. Additionally, Massachusetts statutes and regulations provide that emissions data shall be available for public inspection. *See, e.g.,* M.G.L. c.111, section 142B; 310 CMR sections 3.33(5), 7.12(4)(b); 7.14(1). The following SIP-approved regulations enable the accomplishment of the Commonwealth's emissions recording and reporting objectives:

1. 310 CMR 7.12, Source Registration.
2. 310 CMR 7.13, Stack Testing.
3. 310 CMR 7.14, Monitoring Devices and Reports.

EPA recognizes that Massachusetts routinely collects information on air emissions from its industrial sources and makes this information available to the public. EPA, therefore, proposes that the Commonwealth has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the

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[6] In its June 6, 2014 submittal, Massachusetts also requested that M.G.L. c. 268A, section 7 be added to the SIP. By letter dated June 14, 2016, however, Massachusetts withdrew section 7 from consideration for inclusion in the SIP. Section 7 contains state-specific penalties that are not needed to satisfy CAA section 110(a)(2)(E)(ii).

CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an "imminent and substantial endangerment to public health or welfare, or the environment." Section 303 further authorizes the Administrator to issue "such orders as may be necessary to protect public health or welfare or the environment" in the event that "it is not practicable to assure prompt protection . . . by commencement of such civil action."

We propose to find that the Commonwealth's ISIP submittals demonstrate that certain state statutes and regulations provide for authority comparable to that in section 303. Massachusetts' submittals cite M.G.L. c.111, section 2B, *Air Pollution Emergencies,* which authorizes the Commissioner of the MassDEP to "declare an air pollution emergency" if the Commissioner "determines that the condition or impending condition of the atmosphere in the Commonwealth . . . constitutes a present or reasonably imminent danger to health." During such an air pollution emergency, the Commissioner is authorized pursuant to section 2B, to "take whatever action is necessary to maintain and protect the public health, including but not limited to . . . prohibiting, restricting and conditioning emissions of dangerous or potentially dangerous air contaminants from whatever source derived . . . ." Additionally, sections 2B and 2C authorize the Commissioner to issue emergency orders.

Moreover, M.G.L. c. 21A, section 8 provides that, "[i]n regulating . . . any pollution prevention, control or abatement plan [or] strategy . . . through any . . . departmental action affecting or prohibiting the emission . . . of any hazardous substance to the environment . . . the department may consider the potential effects of such plans [and] strategies . . . on public health and safety and the environment . . . and said department shall act to minimize and prevent damage or threat of damage to the environment."

These duties are implemented, in part, under MassDEP regulations at 310 CMR 8.00, *Prevention and Abatement of Air Pollution Episodes and Air Pollution Incident Emergencies,* which EPA most recently approved into the SIP on October 4, 2002. See 67 FR 62184. These regulations establish levels that would constitute significant harm or imminent and substantial endangerment to health for ambient concentrations of pollutants subject to a NAAQS, consistent with the significant harm levels and procedures for state emergency episode plans established by EPA in 40 CFR 51.150 and 51.151.[7] Finally, M.G.L. c.111, section 2B authorizes the state to seek injunctive relief in the superior court for violation of an emergency order issued by the MassDEP Commissioner. While no single Massachusetts statute or regulation mirrors the authorities of CAA section 303, we propose to find that the combination of state statutes and regulations discussed herein provide for comparable authority to immediately bring suit to restrain, and issue orders against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment.[8]

Section 110(a)(2)(G) also requires that, for any NAAQS, States have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. *See* 40 CFR 51.152(c). A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* The entire state is classified as Priority III for nitrogen dioxide, but contains priority classifications of I or II for particulate matter, sulfur oxides, carbon monoxide, and ozone. *See* 40 CFR 52.1121. Consequently, as relevant to this proposed rulemaking action, Massachusetts' SIP must contain an emergency contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152 with respect to SO_2 and ozone.[9]

Although Massachusetts has adopted 310 CMR 8.00, *The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies,* which is modeled on EPA's example regulations for emergency contingency plans at 40 CFR part 51, appendix L, the version of the regulation that is currently in the SIP does not fully satisfy 40 CFR 51.152. For instance, it does not specify any "emission control actions to be taken at each episode stage," as required by 40 CFR 51.152(a)(3). By letter dated June 14, 2016, MassDEP has committed to submitting for inclusion in the SIP, by a date no later than one year from conditional approval of Massachusetts' infrastructure submissions, a regulation satisfying the contingency plan requirements of element G.

With respect to Pb, we note that Pb is not explicitly included in the contingency plan requirements of subpart H. In addition, we note that there are no large sources of Pb in Massachusetts. Specifically, a review of the National Emission Inventory shows that there are no sources of Pb in Massachusetts that exceed EPA's reporting threshold of 0.5 tons per year. Although not expected, if that situation were to change, Massachusetts does have general authority (*e.g.,* M.G.L. c. 21A, section 8 and c. 111, section 2B) to restrain any source from causing imminent and substantial endangerment.

Consequently, EPA proposes that Massachusetts has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2008 Pb NAAQS. Furthermore, because all AQCRs in the state are classified as Priority III for NO_2, EPA also proposes that the Commonwealth has met the applicable requirements of section 110(a)(2)(G) for the 2010 NO_2 NAAQS. For the 1997 ozone, 2008 ozone, and 2010 SO_2 NAAQS, EPA proposes to approve Massachusetts' submittals with respect to the CAA section 303 comparable authority requirement of element G, but to conditionally approve with respect to the contingency plan requirements of element G, based on MassDEP's commitment to submit a regulation satisfying such requirements within one year of final action on the infrastructure submissions EPA is evaluating in this notice.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state's SIP provide for revision from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. Massachusetts General Laws c. 111, section 142D provides in relevant part that, "From time to time the department shall review the ambient air quality standards and plans for implementation, maintenance and attainment of such standards adopted pursuant to this section and, after public hearings, shall amend such standards and implementation plan so as to minimize the economic cost of such standards and plan for implementation, provided, however, that such standards shall not be less than the minimum federal standards."

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[7] The Commonwealth's Contaminant Concentration Levels are found within Table 1 of 310 CMR 8.01, and match EPA's levels from 40 CFR part 51.151 with the exception of the averaging time used for ozone. Massachusetts uses a 1-hour averaging time, which is slightly more protective that the 2-hour averaging time EPA provides for this pollutant.

[8] By letter dated June 14, 2016, MassDEP stated that it likewise interprets M.G.L. c.111, section 2B and M.G.L. c. 21A, section 8 as together providing MassDEP with authority comparable to that granted to the Administrator by CAA section 303.

[9] Those regulations do not specifically address Pb. *See also* 40 CFR 51.150.

EPA proposes that Massachusetts has met the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

The evaluation of the submissions from Massachusetts with respect to the requirements of CAA section 110(a)(2)(J) are described below.

i. Sub-Element 1: Consultation With Government Officials

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to Section 121 relating to consultation.

Pursuant to EPA-approved Massachusetts regulations at 310 CMR 7.02(12)(g)(2), MassDEP notifies the public "by advertisement in a newspaper having wide circulation" in the area of the particular facility of the opportunity to comment on certain proposed permitting actions and sends "a copy of the notice of public comment to the applicant, the EPA, and officials and agencies having jurisdiction over the community in which the facility is located, including local air pollution control agencies, chief executives of said community, and any regional land use planning agency." Massachusetts did not make a submittal, however, with respect to the requirement to consult with FLMs. As previously mentioned, Massachusetts does not have an approved state PSD program, but rather is subject to a PSD FIP. The FIP includes a provision requiring consultation with FLMs. *See* 40 CFR 52.21(p). Consequently, with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, EPA proposes that Massachusetts has met the consultation with local governments requirement of this portion of section 110(a)(2)(J), but proposes a finding of failure to submit with respect to the FLM consultation requirement. Because the federal PSD program, which Massachusetts implements and enforces, addresses the FLM consultation requirement, a finding of failure to submit will not result in sanctions or new FIP obligations.

ii. Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to: Notify the public if NAAQS are exceeded in an area; advise the public of health hazards associated with exceedances; and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Massachusetts regulations specify criteria for air pollution episodes and incidents and provide for notice to the public via news media and other means of communication. See 310 CMR 8.00. The Commonwealth also provides a daily air quality forecast to inform the public about concentrations of fine particles and, during the ozone season, provides similar information for ozone. Real time air quality data for NAAQS pollutants are also available on the MassDEP's Web site, as are information about health hazards associated with NAAQS pollutants and ways in which the public can participate in regulatory efforts related to air quality. The Commonwealth is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs, which notify the public of air quality levels through EPA's Web site, alerts, and press releases. In light of the above, we propose to find that Massachusetts has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

iii. Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. The Commonwealth's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(D)(ii), and our proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Specifically, we propose a finding of failure to submit with respect to the PSD sub-element of section 110(a)(2)(J) for the 2010 NO_2 and 2010 SO_2 NAAQS,[10] and note that such a finding will not result in any sanctions or new FIP obligations.

iv. Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

To satisfy element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submit such data to EPA upon request.

Pursuant to the authority granted by M.G.L. c.111, sections 142B–142D, the MassDEP has the authority to maintain and operate air sampling stations and devices, make or perform "such examinations, inspections, observations, determinations, laboratory analyses, and surveys; maintain such records; and perform such other acts as it deems necessary to conduct an adequate air pollution control program . . . ." The agency is further authorized to require sources to report monitoring and emissions data. MassDEP accomplishes these objectives via a number of regulations, including the following:

310 CMR 7.02, Plan Approval and Emission Limitations;
310 CMR 7.12, Source Registration;
310 CMR 7.14, Monitoring Devices and Reports; and,
310 CMR 7.00, Appendix A—Emissions Offsets and Nonattainment Review.

The state also collaborates with the Ozone Transport Commission (OTC), the Mid-Atlantic Regional Air Management Association, and EPA in order to perform large scale urban airshed modeling. EPA proposes that

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[10] As discussed earlier, *supra* n.3, EPA has previously issued findings of failure to submit for Massachusetts for PSD-related infrastructure requirements for the 1997 ozone, 2008 ozone, and 2008 Pb NAAQS.

Massachusetts has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

Massachusetts implements and operates the Title V permit program, which EPA approved on September 28, 2001. See 66 FR 49541. In addition, M.G.L. c. 21A, section 18 authorizes MassDEP to promulgate regulations establishing fees. To collect fees from sources of air emissions, the MassDEP promulgated and implements 310 CMR 4.00, Timely Action Schedule and Fee Provisions. These regulations set permit compliance fees, including fees for Title V operating permits. EPA proposes that the Commonwealth has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

To satisfy element M, states must consult with, and allow participation from, local political subdivisions affected by the SIP. Pursuant to M.G.L. c.111, section 142D, MassDEP must hold public hearings prior to revising its SIP. In addition, M.G.L. c. 30A, Massachusetts Administrative Procedures Act, requires MassDEP to provide notice and the opportunity for public comment and hearing prior to adoption of any regulation. Moreover, the Commonwealth's Executive Order No. 145 requires state agencies, including MassDEP, to provide notice to the Local Government Advisory Committee to solicit input on the impact of proposed regulations and other administrative actions on local governments. Therefore, EPA proposes that Massachusetts has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

V. What action is EPA taking?

EPA is proposing to approve most portions of the SIP submissions from Massachusetts certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, with the exception of certain aspects relating to PSD which we have either already made, or are proposing, a finding of failure to submit. Additionally, we are proposing to conditionally approve several aspects of the Commonwealth's submittals. EPA's proposed action for each element for each NAAQS is stated in Table 1 below.

TABLE 1—PROPOSED ACTION ON MA INFRASTRUCTURE SIP SUBMITTALS FOR VARIOUS NAAQS

Element	1997 Ozone	2008 Pb	2008 Ozone	2010 NO_2	2010 SO_2
(A): Emission limits and other control measures	CA	CA	CA	CA	CA
(B): Ambient air quality monitoring and data system	A	A	A	A	A
(C)(i): Enforcement of SIP measures	A	A	A	A	A
(C)(ii): PSD program for major sources and major modifications	PF	PF	PF	FS	FS
(C)(iii): Permitting program for minor sources and minor modifications	A	A	A	A	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	NI	A	NS	A	NS
(D)(i)(II): PSD (prong 3)	PF/CA	PF/CA	PF/CA	FS/CA	FS/CA
(D)(i)(II): Visibility Protection (prong 4)	A	A	A	A	A
(D)(ii): Interstate Pollution Abatement	PF	PF	PF	FS	FS
(D)(ii): International Pollution Abatement	A	A	A	A	A
(E)(i): Adequate resources	A	A	A	A	A
(E)(ii): State boards	A	A	A	A	A
(E)(iii): Necessary assurances with respect to local agencies	NA	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A	A
(G): Emergency power	CA	A	CA	A	CA
(H): Future SIP revisions	A	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+	+
(J)(i): Consultation with government officials	FS	FS	FS	FS	FS
(J)(ii): Public notification	A	A	A	A	A
(J)(iii): PSD	PF	PF	PF	FS	FS
(J)(iv): Visibility protection	+	+	+	+	+
(K): Air quality modeling and data	A	A	A	A	A
(L): Permitting fees	A	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A	A

In the above table, the key is as follows:
A—Approve.
CA—Conditional approval.
FS—Finding of failure to submit.
NA—Not applicable.
NI—Not included in submittal we are acting on in today's action.
NS—No Submittal.
PF—Prior finding of failure to submit.
+—Not germane to infrastructure SIPs.

In addition, we are proposing to incorporate into the Massachusetts SIP sections 6 and 6A of the state's Conflict of Interest law, which the Commonwealth submitted on June 6, 2014, and are proposing to remove 40 CFR 52.1160 regarding Massachusetts LEV in that it is legally obsolete.

As shown in Table 1, we are proposing to issue a finding of failure to submit for sub-element J(i) pertaining to the requirement for consultation with FLMs for all five of the cited NAAQS, and note that in light of the PSD FIP, this finding will not result in sanctions or new FIP obligations. Additionally, we are also proposing to issue findings of failure to submit with respect to the PSD-related elements in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the 2010 NO_2 and 2010 SO_2 NAAQS. As noted above, Massachusetts is already subject to a FIP for PSD, and so EPA will have no additional FIP obligations under section 110(c) of the Act if this action is finalized as proposed. Furthermore, the state will not be subject to mandatory sanctions as a result of these actions.

EPA is proposing to conditionally approve an aspect of the Commonwealth's submittal for element 110(a)(2)(A) pertaining to ambient air quality standards because the current, SIP-approved version of 310 CMR 7.00, Air Pollution Control, does not reflect the current version of the various NAAQS we are proposing to act on in this rulemaking. However, by letter dated June 14, 2016, the Commonwealth committed to add a definition of NAAQS 310 CMR 7.00 that includes a calendar date to address this issue. For this reason, EPA is proposing to conditionally approve this SIP revision provided that the Commonwealth submits to EPA an updated version of 310 CMR 7.00. Additionally, we are proposing to conditionally approve the Commonwealth's submittals for element 110(a)(2)(G) pertaining to contingency plans for the 1997 and 2008 ozone NAAQS, and 2010 SO_2 NAAQS, pursuant to Massachusetts commitment within their June 14, 2016 letter, to submit a regulation meeting the contingency plan requirement of element 110(a)(2)(G) by a date no later than one year from EPA's final action on these infrastructure SIPs. And last, we are proposing to conditionally approve the aspect of 110(a)(2)(D)(i)(II) for the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS pertaining to the Commonwealth's NNSR program pursuant to the state's June 14, 2016 letter committing to submit portions of 310 CMR 7.00: Appendix A, to EPA as a SIP revision request by one year from our final action on these ISIPs.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If EPA conditionally approves these commitments in a final rulemaking action, Massachusetts must meet its commitments to: Submit an updated version of 310 CMR 7.00, Air Pollution Control, containing a calendar date to clarify which NAAQS are being referenced, to fully meet the requirements of element 110(a)(2)(A); submit revisions to its SIP-approved nonattainment new source review regulations to fully meet the requirements of element 110(a)(2)(D)(i)(II); and, submit a regulation addressing the contingency plan requirement of section 110(a)(2)(G). If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, these commitments will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval(s) automatically converted to a disapproval(s). If the State meets its commitments within the applicable time frame, the conditionally approved submissions will remain a part of the SIP until EPA takes final action approving or disapproving them. If EPA disapproves the new submittals, the conditionally approved regulations will also be disapproved at that time. If EPA approves the submittals, the regulations will be fully approved in its entirety and replace the conditionally approved program in the SIP. If EPA determines that it cannot issue a final conditional approval or if the conditional approvals are converted to disapprovals, such action will trigger the Federal implementation plan (FIP) requirement under section 110(c).

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

VI. Incorporation by Reference

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference into the Massachusetts SIP M.G.L c. 268A, sections 6 and 6A of the Commonwealth's Conflict of Interest law submitted to EPA on June 6, 2014. The EPA has made, and will continue to make, this document generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur Oxides, Reporting and recordkeeping requirements.

Dated: July 5, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016–17069 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2015–0599; FRL–9949–28–Region 5]

Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Ohio Portion of the Campbell-Clermont KY-OH Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to redesignate the Ohio portion of the Campbell-Clermont KY-OH sulfur dioxide (SO_2) nonattainment area from nonattainment to attainment. The Ohio portion of this area consists of Pierce Township in Clermont County, Ohio. EPA is also proposing to approve Ohio's maintenance plan submitted on August 11, 2015. The primary emission source in the area has permanently closed, and the air quality in the area is now meeting the SO_2 standard.

DATES: Comments must be received on or before August 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0599 at *http://www.regulations.gov* or via email to *persoon.carolyn@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. Background
II. Redesignation Requirements
III. Determination of Attainment
IV. Ohio's Section 110(k) SIP
V. Permanent and Enforceable Emission Reductions
VI. Requirements for the Area Under Section 110 and Part D
VII. Maintenance Plan
VIII. What action is EPA taking?
IX. Statutory and Executive Order Reviews

I. Background

On June 2, 2010 (75 FR 35520, June 22, 2010), EPA established a revised primary SO_2 national ambient air quality standard (NAAQS) of 75 parts per billion (ppb), which is met at a monitoring site when the three-year average of the 99th percentile of daily maximum one-hour concentrations does not exceed 75 ppb. On August 5, 2013 (78 FR 47191), EPA published its initial air quality designations for the SO_2 NAAQS based upon air quality monitoring data for calendar years 2009–2011. In that action, the Campbell-Clermont KY-OH area was designated nonattainment for the SO_2 NAAQS. The Campbell-Clermont KY-OH nonattainment area is comprised of Pierce Township in Clermont County, Ohio, and five census tracts in Campbell County, Kentucky. The Ohio portion of the nonattainment area contains the Walter C. Beckjord power plant (Beckjord plant). The Kentucky portion of the nonattainment area has less than nine tons of total SO_2 emissions per year, but it contains the SO_2 monitor which had violated the SO_2 standard as of 2011.

By April 4, 2015, Ohio and Kentucky were required to submit nonattainment plan SIPs that meet the requirements of sections 172(c) and 191–192 of the CAA, and provide for attainment of the NAAQS as expeditiously as practicable, but no later than October 4, 2018. Ohio's analysis found the Beckjord plant to be the main contributor to SO_2 monitored levels in the nonattainment area. In 2011, the Beckjord plant had reported 90,835 tons of SO_2 emissions. However, in late 2014, the Beckjord plant permanently ceased operations. Its coal-fired electricity generating units were shut down as of September 2014, and its oil-fired units ceased operations by the end of 2014. Sulfur dioxide emissions at the Beckjord plant totaled 32,603 tons in 2014, and zero tons in 2015. Currently, the total point, area, and mobile source SO_2 emissions in the entire Campbell-Clermont KY-OH nonattainment area are approximately 17 tons per year (tpy). Because of the significant, permanent and enforceable reduction in SO_2 emissions affecting the nonattainment area, and because the Campbell County SO_2 monitor's three-year SO_2 design value[1] for 2012–2014 had fallen below the SO_2 NAAQS, Ohio chose to submit a redesignation request in 2015, in lieu of a nonattainment SIP. On August 11, 2015, the Ohio Environmental Protection Agency (Ohio EPA) submitted its request to EPA to redesignate the Ohio portion of the Campbell-Clermont KY-OH nonattainment area to attainment. For the reasons set forth in this document, EPA is proposing to redesignate the area to attainment.

II. Redesignation Requirements

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment.

1. EPA has determined that the relevant NAAQS has been attained in the area.

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[1] The design value is a statistic computed according to the data handling procedures of the NAAQS (in 40 CFR part 50 appendix T) that, by comparison to the level of the NAAQS, indicates whether the area is violating the NAAQS. For SO_2, the design value is the three-year average of the annual 99th percentile of one-hour daily maximum concentrations.

2. The applicable implementation plan has been fully approved by EPA under section 110(k).

3. EPA has determined that improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the SIP, Federal regulations, and other permanent and enforceable reductions.

4. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA.

5. The State has met all applicable requirements for the area under section 110 and part D.

III. Determination of Attainment

The first requirement for redesignation is to demonstrate that the standard has been attained in the area. As stated in the April 2014 "Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions," for SO_2, there are two components needed to support an attainment determination: A review of representative air quality monitoring data, and a further analysis, generally requiring air quality modeling, to demonstrate that the entire area is attaining the applicable standard, based on current actual emissions or the fully implemented control strategy. Ohio has addressed both components.

Under EPA regulations at 40 CFR 50.17, the SO_2 standard is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of one-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50 at all relevant monitoring sites in the subject area. EPA has reviewed the ambient air monitoring data for the Campbell-Clermont KY-OH nonattainment area. The Campbell-Clermont KY-OH nonattainment area has one SO_2 monitoring site, located in northern Campbell County, Kentucky. The Campbell County SO_2 monitor is operated by the Kentucky Division for Air Quality. This review addresses air quality data collected in the 2012–2014 and 2013–2015 periods, which are the most recent quality-assured data available. All data considered are complete, quality-assured, certified, and recorded in EPA's Air Quality System database.

Table 1 shows the 2012–2014 and 2013–2015 design values for the Campbell-Clermont KY-OH nonattainment area. For 2014, the last year in which the Beckjord plant was operating, the 99th percentile monitored daily maximum value was 61 ppb. For 2015, after the Beckjord plant had shut down, the 99th percentile monitored daily maximum value was 18 ppb. The three-year average design value for 2012–2014 is 72 ppb, and the three-year average design value for 2013–2015 is 50 ppb. Both are below the SO_2 standard. Therefore, the Campbell County SO_2 monitor clearly shows attainment. Kentucky has committed to continue monitoring for SO_2 at this location. Preliminary data for 2016 indicate that the area is continuing to attain the SO_2 standard.

TABLE 1—MONITORING DATA FOR THE CAMPBELL-CLERMONT KY-OH NONATTAINMENT AREA FOR 2012–2014 AND 2013–2015

Site	County	Year and 99th percentile value (ppb)				Average 2012–2014 (ppb)	Average 2013–2015 (ppb)
		2012	2013	2014	2015		
21–037–3002	Campbell, KY	85	71	61	18	72	50

Regarding the second component of the attainment determination, Ohio examined the extent to which the earlier NAAQS violations and subsequent improvement in the local monitored SO_2 values were primarily attributable to the Beckjord plant. Ohio used three methods to judge the prospects of future violations following the shutdown of the Beckjord plant. In these methods, Ohio evaluated local emission inventories, wind patterns during monitored exceedances, and monitored data during periods when the Beckjord plant was still active but not emitting SO_2. EPA proposes to find that these analyses meet the April 2014 guidance requirement to comprehensively evaluate the impacts of the Beckjord plant's closure on the Campbell-Clermont area and demonstrate that the entire area is attaining the SO_2 standard.

As a first step in this approach, Ohio reviewed the inventory of SO_2 sources in the area. This inventory shows no large SO_2 sources in the Kentucky portion of the nonattainment area. There are several SO_2 sources in the Cincinnati area, in Hamilton County, Ohio. The largest of these is Dynegy's Miami Fort Power Station (Miami Fort plant), which emitted over 28,000 tons of SO_2 in 2014. The Miami Fort plant is located 30 kilometers (km) west of the Campbell County SO_2 monitor. As of June 2015, the Miami Fort plant reduced its emissions by approximately 50% from 2014 levels with the closure of its Unit 6. The next largest source, at 1,600 tons of SO_2, is the DTE St. Bernard facility, which is located 17 km north of the Campbell County SO_2 monitor. The other SO_2 sources in Hamilton County emitted less than 200 tons of SO_2 in 2014, and are located 16–31 km from the Campbell County SO_2 monitor. In Clermont County, outside the nonattainment area, the only other SO_2 source is the W.H. Zimmer power plant (Zimmer plant), located approximately 15 km south of the Beckjord plant and 27 km southwest of the SO_2 Campbell County SO_2 monitor. The Zimmer plant emitted 13,500 tons of SO_2 in 2014.

The second part of this review was to more closely examine potential contributors to SO_2 NAAQS exceedances in the Campbell-Clermont KY-OH nonattainment area. For this purpose, Ohio analyzed wind patterns and back-trajectories for the 44 hours[2] for which SO_2 levels were greater than 75 ppb at the Campbell County SO_2 monitor between 2010 and 2014. The hourly monitored SO_2 values ranged from 76 ppb to 180 ppb. The 24-hour back trajectories seek to determine the origins of air flow leading toward the monitor location. Hourly wind data were also used to help focus on the short term flow close to the times of exceedances. Ohio found that the trajectories indicated that high concentrations at the Campbell County SO_2 monitor were most often attributable to wind flows from the vicinity of the Beckjord plant. Winds (measured at the Cincinnati/Northern Kentucky airport) were almost exclusively from the east during the 44 hours with high monitored concentrations. Trajectories passed over or near the Beckjord plant in about two thirds of the 44 hours. The Beckjord plant appeared to be the main contributor to 42 of the hours. One hour appeared to have some influence from the Zimmer plant as well as from the Beckjord plant, and for another hour, Ohio could not identify any SO_2 source located in the area indicated by the back-trajectory and surface winds. None of the exceedances appeared to be attributable to the Miami Fort plant or other sources west of the Campbell County SO_2 monitor.

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[2] Although it is possible for a SO_2 monitor to measure SO_2 values above the NAAQS for several individual hours during a given day, only the single highest monitored hourly SO_2 value in each 24-hour day is formally defined as "an exceedance of the SO_2 NAAQS," if it is greater than 75 ppb. There were 26 exceedances of the SO_2 NAAQS at the Campbell County SO_2 monitor during 2012–2014, but there were 44 total hours for which the SO_2 monitor recorded SO_2 values above the SO_2 NAAQS of 75 ppb. A violation of the SO_2 NAAQS, as opposed to an exceedance, is recorded when the three-year average of the annual 99th percentile of one-hour daily maximum concentrations exceeds 75 ppb. In this analysis, to identify contributing SO_2 sources, Ohio evaluated the 44 hours in 2012–2014 for which the SO_2 monitor had registered a SO_2 concentration over 75 ppb.

The third analysis considered monitored SO_2 values and wind directions during the time period of January 1, 2012, through February 28, 2015. During that period, there were a total of 10,231 hours when the Beckjord plant's SO_2 emissions were zero. The Beckjord plant was not operating at all in 2015 or during the last four months of 2014, and there were 1400–2500 hours in which the Beckjord plant did not emit SO_2 during 2012 and 2013 as well. Ohio examined the Campbell County monitored data and found that no exceedances of the SO_2 NAAQS were measured during these 10,231 hours. The maximum monitored concentration at the Campbell County SO_2 monitor during these hours was 34 ppb. The highest monitored values measured while the Beckjord plant was emitting SO_2 were typically associated with winds coming from the east and southeast, suggesting the Beckjord plant's influence. The winds associated with the highest monitored values during the 10,231 hours without impacts from the Beckjord plant, however, came from the west and southwest. As those monitored values were less than half of the SO_2 NAAQS in magnitude, Ohio's analysis supports the assertion that the closing of the Beckjord plant has led to attainment of the SO_2 NAAQS, and suggests that future violations caused by other nearby sources are unlikely.

Ohio did not further evaluate the sources to the north and west of the nonattainment area due to their distance from the area and their emission levels, and because the previously discussed analyses did not indicate that sources north and west of the nonattainment area have had a significant influence on monitored exceedances. Ohio did, however, specifically evaluate the Zimmer plant for its potential contribution to elevated SO_2 levels in the Campbell-Clermont KY-OH nonattainment area. The Zimmer plant's impacts warranted additional analysis because it has substantial emissions, is located relatively near the Beckjord plant, and generally has the greatest potential (after the shutdown of the Beckjord plant) to cause violations in the nonattainment area.

First, the State considered a graphical analysis of the 2012–2014 hourly SO_2 levels at the Campbell County SO_2 monitor compared to the hourly SO_2 emissions from the Beckjord and Zimmer plants. The Zimmer plant's emissions stayed relatively constant over the time period, while the Beckjord plant's emissions, which were much larger than the Zimmer plant's, also varied more widely. The data showed that the monitored SO_2 levels seemed to fluctuate in a pattern similar to the Beckjord plant's emission variations, falling to its lowest levels when the Beckjord plant's emissions were very low, even as the Zimmer plant's emissions remained relatively steady, which suggests that the Campbell County SO_2 monitor was more strongly influenced by the Beckjord plant's impacts. Based on these results, particularly from the trajectory analyses, Ohio's first approach yields a finding that the violations previously recorded at the SO_2 monitor were primarily attributable to emissions from the Beckjord plant, which in turn indicates that the shutdown of the Beckjord plant can be expected to result in no further violations at this monitoring site.

Ohio's second approach to assessing prospects of future violations in the nonattainment area was to perform a modeling analysis to evaluate the location of the Zimmer plant's maximum impacts and to estimate a worst-case impact within the nonattainment area. This analysis was intended to address the potential for violations not just at the monitoring site (28 km from the Zimmer plant) but also elsewhere in the nonattainment area. The Zimmer plant is approximately 11.5 km from the nearest edge of the Campbell-Clermont KY-OH SO_2 nonattainment area. Ohio's analysis covered only the time period with available meteorological data after the Beckjord plant's coal units shut down: August 30, 2014, to February 28, 2015. Because this data set is shorter than the five-year period typically used to demonstrate attainment of the SO_2 standard, Ohio used the second high modeled maximum daily value to represent the 99th percentile, rather than the fourth high modeled maximum daily value. Ohio used a coarse receptor grid within the nonattainment area, and a finer grid within three kilometers of the Zimmer plant. Maximum impacts were found to occur within one kilometer of the Zimmer plant. In this analysis, Ohio modeled a unit emission rate of one gram per second from the Zimmer plant's two stacks, to find the relative impacts from the Zimmer plant at the monitoring location and at a range of other receptors inside the nonattainment area as well as closer to the plant. Ohio then used the second high value measured at the Campbell County monitor during this time period with zero impacts from The Beckjord plant, under the conservative assumption that this monitored value was entirely caused by the Zimmer plant's emissions, to develop a numerical estimate of the relative worst-case impact of the Zimmer plant elsewhere within the nonattainment area. The second high monitored value was 24 ppb, and Ohio determined that the Zimmer plant's highest impact within the nonattainment area relative to that monitored value would be approximately 52 ppb. Impacts at this level would not cause exceedances of the SO_2 NAAQS within the nonattainment area.

As a third approach, Ohio and Kentucky estimated future SO_2 concentrations in the nonattainment area using a method similar to developing a conservative background concentration for a typical modeled attainment demonstration. Ohio used Campbell County SO_2 monitor data from 2010–2014 for this calculation. Since the Beckjord plant was operating during this period, Ohio followed EPA guidance to ensure that the monitored values for background did not count impacts from the Beckjord plant or the Zimmer plant. Ohio determined the 90 degree wind direction sector for which the Campbell County SO_2 monitor could be impacted by direct emissions from either power plant, and excluded monitored hours when winds came from this sector. Ohio averaged the remaining monitored values in each year, excluding values of zero for additional conservatism, and chose the highest value, 4.4 ppb. Ohio further refined the analysis to exclude only the 45 degree sector centered on the Beckjord plant. The highest average value in this case, which could include the Zimmer plant's impacts, was 4.76 ppb. Since no significant sources exist now that would be expected to cause significant concentration gradients within the nonattainment area, conceptually a modeling analysis for this area would reflect modeling zero emissions, and the final "modeled" result would be equal to the background concentration. Since the background value could also conservatively include actual 2010–2014 contributions from Cincinnati-area sources which have reduced their SO_2 emissions since 2014, this analysis supports Ohio's assertion that the Campbell-Clermont KY-OH nonattainment area will continue to attain the SO_2 NAAQS.

In addition to these analyses, all of which were provided in Ohio's redesignation request, Ohio has also provided relevant information in the separate context of addressing the prospective SO_2 designation for the more immediate vicinity of the Zimmer plant. Ohio's September 16, 2015, submittal provided a full modeling analysis in accordance with EPA's modeling Technical Assistance Document (TAD) which indicated that the maximum concentration estimated near the Zimmer plant was 56 ppb, at a distance just over one kilometer from the plant's stacks. Based largely on this information, EPA wrote to Ohio on February 16, 2016, stating EPA's preliminary intention to promulgate an unclassifiable/attainment designation for all of Clermont County that is not already designated, *i.e.* for all of Clermont County except the portion (Pierce Township) that is included in the Campbell-Clermont KY-OH nonattainment area. Since the Campbell-Clermont KY-OH nonattainment area is substantially more distant than the peak impacts of the Zimmer plant, and the impacts of the Zimmer plant in the area would therefore be much lower than 56 ppb, this modeling provides clear evidence that the Zimmer plant is not causing violations anywhere in the Campbell-Clermont KY-OH nonattainment area. In summary, the monitored data show attainment for 2012–2014 and for 2013–2015; Ohio has demonstrated that the closed Beckjord plant was likely to have caused the previous violations of the SO_2 NAAQS; and Ohio has demonstrated that neither the Zimmer plant nor other SO_2 emissions are expected to cause future violations in the area. Therefore, EPA agrees that the Campbell-Clermont KY-OH nonattainment area is currently attaining the SO_2 NAAQS.

IV. Ohio's Section 110(k) SIP

EPA has determined that Ohio has a fully approved SIP under section 110(k). Ohio has implemented its SO_2 SIP regulations at Ohio Administrative Code (OAC) 3745–18, and Ohio maintains an active enforcement program to ensure ongoing compliance. Ohio's new source review/prevention of significant deterioration program will address emissions from new sources. Ohio's current SO_2 SIP rule for Clermont County is codified at OAC 3745–18–19. The existing rule addressing the Beckjord plant's SO_2 emissions, OAC 3745–18–19(B), remains in the SIP, but Ohio has submitted documents which demonstrate that the facility has closed and is no longer authorized under the State's permitting program to operate.

V. Permanent and Enforceable Emission Reductions

As previously stated, the Beckjord plant closed in late 2014, and the monitored improvement in air quality is largely due to this closure. The closure results in a reduction of 90,835 tpy, considering the plant's 2011 emissions, representing the time the area was classified nonattainment; or a reduction of 32,603 tpy, considering the plant's emissions in 2014, when the area first began to monitor attainment. Upon notification of the Beckjord plant's closure, in accordance with Ohio EPA policy, Ohio ceased its authorization for the facility to operate unless it obtains a new permit. Ohio EPA provided documentation of this shutdown in the form of an October 14, 2014, letter from Duke Energy Ohio, Inc., to the Southwest Ohio Air Quality Agency. In this letter, Duke Energy Ohio, Inc. confirmed that the Beckjord plant's six large coal-fired units are permanently shut down and removed from service as of October 1, 2014. The letter confirmed that Ohio's authorization for Duke Energy Ohio, Inc. to operate the six units had ceased. The Beckjord plant has been demonstrated to be the primary SO_2 source which caused the monitored exceedances. As it has closed and cannot reopen without applying for a new operating permit, EPA agrees that the improvement in air quality in the nonattainment area is due to permanent and enforceable emission reductions.

VI. Requirements for the Area Under Section 110 and Part D

Ohio has submitted information demonstrating that it meets these requirements. EPA approved Ohio's infrastructure SIP for SO_2 on August 14, 2015 (80 FR 48733). This infrastructure SIP approval confirms that Ohio's SIP meets the requirements of CAA section 110(a)(1) and 110(a)(2) to contain the basic program elements, such as an active enforcement program and permitting program.

Section 191 of the CAA requires Ohio to submit a part D nonattainment SIP for the Campbell-Clermont KY-OH nonattainment area by April 4, 2015. Because Ohio submitted its August 11, 2015, redesignation request instead of a nonattainment SIP, EPA was compelled to include this area in our March 18, 2016, finding of failure to submit (81 FR 14736). However, final promulgation of this redesignation to attainment would end any nonattainment plan requirements, and promulgation of this redesignation within 18 months of the finding of failure to submit would result in no sanctions taking effect.

With the redesignation request of August 11, 2015, Ohio submitted information addressing the section 172 part D SIP requirements. Ohio submitted an attainment inventory of the SO_2 emissions from sources in the nonattainment area. Ohio chose 2011 for its base year emissions inventory, as comprehensive emissions data was available and updated that year, which satisfies the 172(c)(3) requirements. The Kentucky portion of the nonattainment area contained 11 minor point source facilities. Their combined SO_2 emissions were less than one ton per year. The only significant source in the Ohio portion of the nonattainment area is the Beckjord plant. Area and non-highway mobile source emissions were taken from the 2011 National Emissions Inventory (NEI), with county-wide values adjusted based on the population percentages in the nonattainment area. Highway mobile source emissions were provided by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI), based on dividing the vehicle miles traveled in the nonattainment area by the vehicle miles traveled in the entire county. Census data and projections were used to develop growth factors for future years. The attainment year inventory was based on 2014 emissions, adjusted for projected growth in the area, and accounting for the Beckjord plant's closure.

Table 2 shows the projected inventories. Note that Kentucky's inventory remains steady at approximately 8 tpy total, while Ohio's projected inventory, accounting for the Beckjord plant's actual closure, drops from over 90,000 tpy in 2011 to approximately 8 tpy in the interim and maintenance years. This large reduction is expected to be sufficient to maintain the SO_2 standard.

TABLE 2—CAMPBELL-CLERMONT NONATTAINMENT AREA SO_2 EMISSION INVENTORY TOTALS

[tpy]

	2011 base-year emissions	2014 attainment year	2020 interim year	2027 maintenance year
Ohio	90,842.51	32,610.56	8.36	8.46
Kentucky	8.56	8.54	8.47	8.27
Combined total	90,851.07	32,619.10	16.83	16.73

Section 172(c)(1) requires nonattainment area SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not applicable for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for reasonable further progress (RFP) and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements "have no meaning" for an area that has already attained the standard. EPA's understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to SO_2 in the April 2014 "Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions," and suspends a State's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9). Courts have upheld EPA's interpretation of section 172(c)(1) for "reasonably available" control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC* v. *EPA,* 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club* v. *EPA,* 314 F.3d 735, 744 (5th Cir. 2002); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).[3] Therefore, because the Campbell-Clermont KY-OH nonattainment area has attained the SO_2 standard, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are not part of the "applicable implementation plan" required to have been approved prior to redesignation per CAA section 107(d)(3)(E)(ii). In any case, in the absence of major point sources, and in the context of implemented measures (especially the shutdown of the Beckjord plant) having achieved attainment, EPA believes that Ohio has satisfied the reasonably available control measures/reasonably available control techniques (RACM/RACT) requirement for this area.

The other section 172 requirements that are designed to help an area achieve attainment are the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress, the requirement to submit the section 172(c)(9) contingency measures, and the section 172(c)(6) requirement for the SIP to contain control measures necessary to provide for attainment of the NAAQS. These are also not required to be approved as part of the "applicable implementation plan" for purposes of satisfying CAA section 107(d)(3)(E)(ii).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Ohio has demonstrated that the Campbell-Clermont KY-OH nonattainment area will be able to maintain the NAAQS without part D NSR in effect, and therefore Ohio does not need to have a fully approved part D NSR program prior to approval of the redesignation request. Ohio's PSD program will become effective in the Campbell-Clermont KY-OH nonattainment area upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes that the Ohio SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA. On August 20, 2014, Ohio submitted documentation establishing transportation conformity procedures in its SIP. EPA approved these procedures on March 2, 2015 (80 FR 11133). Moreover, EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because, like other requirements listed above, State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

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[3] Although the Court of Appeals for the Sixth Circuit has issued a contrary opinion in the context of redesignations for ozone and $PM_{2.5}$, EPA believes that these opinions, interpreting the applicability of the ozone and $PM_{2.5}$ RACM/RACT requirements for redesignations for those pollutants, do not address the applicability of the RACM/RACT requirement for SO_2. See *Sierra Club* v. *EPA,* 793 F.3d 656 (6th Cir. 2015).

As discussed above, EPA is proposing to find that Ohio has satisfied all applicable requirements for purposes of redesignation of the Campbell-Clermont KY-OH nonattainment area under section 110 and part D of title I of the CAA.

VII. Maintenance Plan

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the nonattainment area is redesignated to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future one-hour SO_2 violations. Specifically, the maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

Ohio's August 11, 2015, redesignation request contains its maintenance plan, which Ohio has committed to review eight years after redesignation. Ohio submitted an attainment emission inventory which addresses current emissions and projections of future emissions, for point, area, and mobile sources. Total SO_2 emissions in the nonattainment area were 90,851 tpy in the base year, 2011; 32,619 tpy in the attainment year, 2014; and 16.7 tpy in the projected future years between 2017 and 2027 (see Table 2). Ohio has demonstrated that after the closure of the Beckjord plant, the area is attaining and is expected to maintain the SO_2 NAAQS. Kentucky has committed to continue monitoring at the Campbell County site in accordance with the requirements of 40 CFR part 58. These data will be used to verify continued attainment. Ohio has the authority to adopt, implement and enforce any subsequent emissions control measures deemed necessary to correct any future SO_2 violations. Regarding contingency measures to implement in the case of a future violation of the SO_2 standard, Ohio did not name a specific control measure, as there are no sources in or near the nonattainment area with the potential to cause a violation. As a contingency plan, therefore, Ohio has committed to identify any sources which cause or contribute to monitored violations, and follow up with enforcement proceedings, expediting any necessary corrective actions. SIP rules will be revised in accordance with Ohio's rulemaking procedures if new control measures are needed. Ohio commits to study SO_2 emission trends and identify areas of concern if the annual average 99th percentile maximum daily one-hour SO_2 concentration of 79 ppb or greater occurs in a single year, or if a two-year average of 76 ppb or greater occurs in the maintenance area. Ohio will adopt and implement corrective actions as necessary to address such trends of increasing emissions or ambient impacts. The public will have the opportunity to participate in the contingency measure implementation process. EPA proposes to find that Ohio's maintenance plan adequately addresses the five basic components necessary to maintain the SO_2 standard in the Campbell-Clermont KY-OH nonattainment area.

VIII. What action is EPA taking?

In accordance with Ohio's August 11, 2015, request, EPA is proposing to redesignate the Ohio portion of the Campbell-Clermont KY-OH nonattainment area from nonattainment to attainment of the SO_2 NAAQS. Ohio has demonstrated that the area is attaining the SO_2 standard, and that the improvement in air quality is due to the permanent and enforceable shutdown of the main SO_2 source in the nonattainment area. EPA is proposing to approve the maintenance plan that Ohio submitted to ensure that the area will continue to maintain the SO_2 standard.

IX. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 11, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–17054 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2015–0032; FRL–9948–45]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before August 19, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

PP 5F8379. EPA–HQ–OPP–2015–0559. Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide penflufen, (1H-

Pyrazole-4-carboxamide, N-[2-(1,3-dimethylbutyl)phenyl]-5-fluoro-1,3-dimethyl-) in or on beet, sugar, roots at 0.01 parts per million (ppm); and beet, sugar, tops at 0.01 ppm. The high performance liquid chromatography-electrospray ionization/tandem mass spectrometry (LC/MS/MS) is used to measure and evaluate the chemical penflufen. Contact: RD.

PP 6E8469. EPA–HQ–OPP–2016–0286. Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180.626 for residues of the fungicide, prothioconazole, in or on imported commodities in the Sunflower subgroup 20B at 0.2 ppm. The LC/MS/MS analytical method is used to measure and evaluate the chemical prothioconazole. Contact: RD.

PP 6E8473. EPA–HQ–OPP–2016–0333. BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709–3528, requests to establish a tolerance in 40 CFR 180.513 for the residues of the insecticide chlorfenapyr [4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5(trifluoromethyl)-1H-pyrrole-3-carbonitrile] in or on tea at 70 ppm. The analytical method is designated as M 2427, a gas chromatography/electron capture detection (GC/ECD) method with a limit of quantitation (LOQ) of 0.05 ppm. Contact: RD.

PP 6E8480. EPA–HQ–OPP–2016–0342. IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201–W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180.127 for residues of the insecticide piperonyl butoxide [(butyl carbityl)(6-propyl piperonyl)ether], in or on fungi, edible, group 21 at 30 ppm. The analytical method consisting of high pressure LC/MS/MS is used to measure and evaluate the chemical piperonyl butoxide. Contact: RD.

PP 6F8451. EPA–HQ–OPP–2016–0325. SePRO Corporation, 11550 North Meridian Street, Suite 600, Carmel, IN 46032, requests to establish a tolerance in 40 CFR part 180.420 for residues of the herbicide fluridone in or on cotton, gin byproducts at 0.1 ppm. The enzyme-linked immunosorbant assay (ELISA), high performance liquid chromatography with ultraviolet detection (HLPC/UV), and liquid chromatography with tandem mass spectroscopy (LC-MSMS) is used to measure and evaluate the chemical fluridone. Contact: RD.

PP 6F8470. EPA–HQ–OPP–2016–0295. Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish a tolerance in 40 CFR part 180.350 for residues of the herbicide, nitrapyrin [2-chloro-6-(trichloromethyl) pyridine] and its metabolite, 6-chloropicolinic acid (6–CPA), in or on nut, tree group 14–12 at 0.02 ppm and almond, hulls at 0.07 ppm. Method 205G881A–1 determines residues of nitrapyrin by extracting with deionized water and 1:1 (v/v) hexane:toluene. Extracts are then concentrated and passed through a silica gel column before being analyzed by gas chromatography with electron-impact mass spectrometry detection. Method 205G881–B1 determines residues of 6-chloropicolinic acid by extracting with aqueous 0.1 N sodium hydroxide. Extracts are then acidified and cleaned up by C18 solid phase extraction before being analyzed by liquid chromatography with tandem mass spectrometry detection. Contact: RD.

Amended Tolerances

PP 5F8386. EPA–HQ–OPP–2016–0326. Tessenderlo Kerley, Inc., Suite 300, 2255 N. 44th Street, Phoenix, AZ 85008, requests to amend the tolerance in the 40 CFR part 180.184 for residues of the herbicide linuron in or on potatoes at 0.2 ppm by removing the regional restrictions. The GC/MSD method is used to measure and evaluate the chemical linuron. Contact: RD.

PP 6E8472. EPA–HQ–OPP–2016–0314. Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W, Princeton, New Jersey 08540, requests to amend 40 CFR part 180.345 by increasing the existing tolerance for the combined residues of the herbicide ethofumesate, (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites, 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate both calculated as the parent compound in or on beet, sugar, molasses from 0.5 to 2.5 parts per million (ppm); beet, sugar, refined sugar from 0.2 to 1.0 ppm; beet, sugar, roots from 0.3 to 1.5 ppm; and beet, sugar, tops from 4.0 to 30.0 ppm. Liquid chromatography with tandem mass spectrometry analysis is the analytical method used to identify and measure chemical residues of ethofumesate. Contact RD.

PP IN–10858. EPA–HQ–OPP–2016–0121. Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113–03227, requests to amend the tolerance in 40 CFR 180.469 for residues of dichlormid (CAS Reg. No. 37764–25–3), when used as an inert ingredient (herbicide safener) in pesticide formulations, to include tolerances at 0.05 ppm for all commodities for which there are tolerances for the active ingredients metolachlor and s-metolachlor (40 CFR 180.368). Gas Chromatography Mass Spectrometry (GC–MS) with nitrogen selective thermionic detection is used to measure and evaluate the chemical dichlormid. Contact: RD.

New Tolerance Exemptions

PP IN–10888. EPA–HQ–OPP–2016–0252. Bayer HealthCare, LLC, Animal Health Division, P.O. Box 390 Shawnee Mission, KS 66201, requests to establish an exemption from the requirement of a tolerance for residues of titanium dioxide (CAS Reg. No. 13463–67–7) in or on honey when used as a pesticide inert ingredient (colorant) at a concentration of not more than 0.1% by weight in pesticide formulations intended for varroa mite control around bee hives. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

PP IN–10925. EPA–HQ–OPP–2016–0330. Momentive Performance Materials, 260 Hudson River Rd., Waterford, NY 12188, requests to establish an exemption from the requirement of a tolerance for residues of acrylic acid, butyl acrylate, styrene copolymer with a minimum number-average molecular weight (in amu) of 5,200 (CAS Reg. No. 25586–20–3) when used as an inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

Amended Tolerance Exemptions

PP IN–10935. EPA–HQ–OPP–2016–0283. OMC Ag Consulting, 828 Tanglewood Lane, East Lansing, MI 48823, on behalf of Vive Crop Protection Inc., 700 Bay St., Suite 1000, Toronto, ON M5G 1Z6, Canada, requests to amend an exemption from the requirement of a tolerance for residues of acrylic polymers composed of one or more of the following monomers: Acrylic acid, butyl acrylate, butyl methacrylate, carboxyethyl acrylate, ethyl acrylate, ethyl methacrylate, hydroxybutyl acrylate, hydroxybutyl methacrylate, hydroxyethyl acrylate, hydroxyethyl methacrylate, hydroxypropyl acrylate, hydroxypropyl methacrylate, isobutyl methacrylate, lauryl methacrylate, methacrylic acid, methyl acrylate, methyl methacrylate and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, diethyl maleate, dioctyl maleate, maleic acid, maleic anhydride, monoethyl maleate, monooctyl maleate, *N*-methyl acrylamide, *N,N*-dimethyl acrylamide, *N*-octylacrylamide; and their corresponding ammonium, isopropylamine, monoethanolamine, potassium, sodium triethylamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200 when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960 to include the monomers lauryl acrylate and acrylamidopropyl methyl sulfonic acid. The petitioner believes no analytical method is needed because the request is for an exemption from the requirement of a tolerance. Contact: RD

Authority: 21 U.S.C. 346a.

Dated: June 30, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–17164 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Part 752

RIN 0412–AA82

Agency for International Development Acquisition Regulation (AIDAR): Preference for Privately Owned U.S.-Flag Commercial Vessels

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: This proposed rule is a companion document to the U.S. Agency for International Development (USAID) direct final rule (published in the "Rules and Regulations" section of this **Federal Register**), amending the AIDAR to conform to the current requirements of the Cargo Preference Act of 1954 and provide up-to-date submission instructions to the Maritime Administration (MARAD).

DATES: Submit comments on or before September 19, 2016.

ADDRESSES: Address all comments concerning this notice to Lyudmila Bond, Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), Room 867–G, SA–44, Washington, DC 20523–2052. Submit comments by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: Submit electronic comments to *lbond@usaid.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

Mail: USAID, Bureau for Management, Office of Acquisition & Assistance, Policy Division, Room 867–G, SA–44, 1300 Pennsylvania Ave. NW., Washington, DC 20523–2052.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, Telephone: 202–567–4753 or Email: *lbond@usaid.gov.*

SUPPLEMENTARY INFORMATION: USAID is publishing this amendment as a direct final rule because the Agency views it as a conforming and administrative amendment and does not anticipate any adverse comments. A detailed discussion of the rule is set forth in the preamble of the direct final rule.

If no adverse comments are received in response to the direct final rule, no further action will be taken related to this proposed rule.

If adverse comment(s) are received on the direct final rule, USAID will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. All public comments received on the direct final rule will be addressed in a subsequent final rule based on this proposed rule. USAID will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the Addresses section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Comments submitted by email must be included in the text of the email or attached as a PDF file. Please avoid using special characters and any form of encryption. Please note, however, that because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington, USAID recommends sending all comments to the Federal eRulemaking Portal.

After receipt of a comment and until finalization of the action, all comments will be made available at *http://www.regulations.gov* for public review without change, including any personal information provided. Do not submit information that you consider to be Confidential Business Information (CBI), Personally Identifiable Information or any information that is otherwise protected from disclosure by statute.

As noted above, in the "Rules and Regulations" section of this **Federal Register**, USAID is publishing a direct final rule with the same title that announces revisions to the Agency for International Development Acquisition Regulation (AIDAR). For detailed information on these revisions, please see the direct final rule.

Dated: July 1, 2016.

Mark Walter,

Acting Chief Acquisition Officer.

[FR Doc. 2016–17136 Filed 7–19–16; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BF72

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The New England Fishery Management Council has submitted to NMFS Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan which proposes to incorporate a specifications process into the Atlantic Sea Scallop Fishery Management Plan and to change the start of the fishing year from March 1 to April 1. The ability to develop specifications to set annual or biennial allocations would allow for a more timely process for setting annual allocations than currently possible with framework adjustments. By adjusting the start of the scallop fishing year from March 1 to April 1, NMFS would be able to implement simple specification actions at the start of the fishing year on a more consistent basis. NMFS requests public comments on whether NMFS should approve this amendment and the draft Environmental Assessment incorporated in the amendment.

DATES: Comments must be received on or before September 19, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2016–0028, by any one of the following methods.

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0028*,
2. Click the "Comment Now!" icon, complete the required fields.
3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan (Amendment 19), and of the draft Environmental Assessment (EA) and Regulatory Impact Review, are available from the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. The EA/RIR is also accessible via the Internet at: *www.greateratlantic.fisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any Fishery Management Plan (FMP) amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. The New England Fishery Management Council approved Amendment 19, which would authorize the Council to develop specifications to set annual or biennial allocations and change the start of the scallop fishing year from March 1 to April 1. The Council submitted its final version of Amendment 19 to NMFS for review on June 16, 2016. NMFS has declared a transmittal date of July 14, 2016. The Council has reviewed the Amendment 19 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA. If approved by NMFS, this amendment would simplify the specifications-setting process and enable scallop allocations to be implemented closer to the scallop fishing year.

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The Council has had to rely on the framework adjustment process to set scallop fishery measures, often referred to as specifications, that occur annually or biennially. Typically, these specifications include annual catch limits, days-at-sea (DAS), rotational area management, possession limits, access area trip allocations, individual fishing quota (IFQ) allocations, and allocations for vessels with Northern Gulf of Maine permits. These framework adjustments often include other management measures and are often implemented 2 to 3 months after the March 1 start of the scallop fishing year (March 1 through February 28/29).

Amendment 4 to the Scallop FMP (59 FR 2757, January 19, 1994), was a major shift in scallop fishery management. It established a limited access permit and effort control program and the new permits and effort control became effective on March 1, 1994. Framework Adjustment 1 (59 FR 36720, July 19, 1994) formally adopted March1 as the start of the scallop fishing year. There was no biological or economic rationale originally for selecting this date as the start of the fishing year: Framework 1 codified the March 1 Amendment 4 effective date as the start of the fishing year so that allocations for 1994 spanned a 12-month period in order to ensure a reduction in fishing effort the first year of the DAS effort-control program. This fishing year has remained in place since that time, even though specifications have become increasingly more complicated with the development of the scallop access area rotation program in 2004 and IFQ fishery in 2010.

In the last 16 years following Framework 11, there have been 12 actions that set annual scallop specifications. Four of those actions set specifications for 2 years, which ensured that the second year's specifications for each of those actions were implemented on March 1. Aside from these biennial frameworks, we have only been able to set specifications by March 1 on two occasions, both involving special circumstances (*i.e.,* the proposed rule was waived for one framework action and Council took final action 2 months earlier than usual for the other action).

Typically, the Council begins developing a specifications-setting framework in June. Scallop biomass estimates are provided through scallop surveys conducted by NMFS and other research institutions in the spring and summer. These estimates are not generally available for consideration until the early fall, at which point the Scallop Plan Development Team (PDT) develops and analyzes fishery allocation alternatives for Council consideration. In order to incorporate the most recent available scallop survey information into these alternatives, which has proved essential in setting appropriate access area catch levels, the Council has been taking final action in November and NMFS has typically implemented allocations in May or June.

In 2013, the Council began developing specifications on an annual basis via frameworks at the request of the industry to avoid biennial specifications that resulted in the second year specifications being out of sync with what the most recent annual surveys indicate could be harvested in a given area. However, this meant that the annual specifications were likely to be late every year due to availability of relevant data. To address this problem, the Council has been specifying "default" specifications for the year after annual specifications are set to fill the gap between the end of the fishing year and the setting of new specifications for the next fishing year. Implementing these "default" specifications every year is an administrative burden to NMFS staff and can result in complex inseason changes in fishery specifications. In addition, default specifications lead to confusion and uncertainty for the fleet, as well as potentially negative impacts on the resource and fishery if effort shifts into areas or seasons that are less desirable as a result of delayed measures.

The Council initiated Amendment 19 to develop an alternative to the framework adjustment process to implement specifications closer to the start of the scallop fishing year. To address these timing issues while still supporting the current timeline for integrating the best available science in to the management process, Amendment 19 proposes to:

- Establish a specifications process so that allocations would not be tied only to actions that tend to have longer timelines (*e.g.,* frameworks or amendments); and
- Adjust the scallop fishing year to April 1 through March 31.

Adding the ability to adjust allocations through a specifications setting process would produce some time-savings because the Council would not be required to discuss measures over the course of two Council meetings, as is required under the framework adjustment process. However, it would not guarantee allocations would be in place by March 1 of each year. As a result, the Council is recommending that the fishing year be changed to April 1 through March 31. Pushing the fishing year back one month would increase the likelihood that NMFS would be able to implement simple specifications actions at the start of the scallop fishing year on a more consistent basis, avoiding the need to implement default measures. Amendment 19 would also adjust the scallop permit year so that it continues to match the official fishing year (*i.e.,* scallop permits would need to be renewed by April 1 of each year).

In addition, NMFS and Council staff discussed other, non-regulatory streamlining initiatives that will result in time-savings in implementing final allocations. These include preparing a decision draft of an EA immediately following the Council's final action on a framework and publishing a proposed rule prior to NMFS' formal review of the EA. These measures will assist in implementing simple, non-controversial specifications actions on a quicker timeline than typical frameworks.

We are soliciting public comments on Amendment 19 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 19 will be published in the **Federal Register** for additional public comment. NMFS will evaluate the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability to be considered in the approval/disapproval decision on Amendment 19. All comments received by close of business on September 19, 2016, whether specifically directed to Amendment 19 or the proposed rule, will be considered in the approval/disapproval decision on the amendment.

Comments received after that date will not be considered in the decision to approve or disapprove Amendment 19, including those postmarked or otherwise transmitted, but not received by NMFS, by the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17158 Filed 7–19–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160617540–6540–01]

RIN 0648–XE695

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a typographical error in the **ADDRESSES** section to a proposed rule published on June 23, 2016.

DATES: Comments on the proposed rule must be submitted on or before July 25, 2016.

ADDRESSES: You may submit comments on this document identified by NOAA–NMFS–2016–0048, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0048,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Joshua Lindsay.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Copies of the report "Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015–2016 Fishing Year" may be obtained from the West Coast Region (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034, *Joshua.Lindsay@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

In the **ADDRESSES** section of a proposed rule (81 FR 40844, June 23, 2016) on page 40845, in the first column, NMFS used an incorrect year, "2015" rather than "2016", in the document identifier and Federal e-Rulemaking Portal hyperlink. The **ADDRESSES** section has been corrected in this document.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–17130 Filed 7–19–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 81, No. 139

Wednesday, July 20, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Oregon State University of Corvallis, Oregon, an exclusive license to the variety of red raspberry described in U.S. Plant Patent Application Serial No. 14/999,027, "RED RASPBERRY PLANT NAMED 'KOKANEE'," filed on March 22, 2016.

DATES: Comments must be received on or before August 19, 2016.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2016–17084 Filed 7–19–16; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Delta-Bienville Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Delta-Bienville Resource Advisory Committee (RAC) will meet in Forest, Mississippi. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/ADA00765529071A58825754A0055730D?OpenDocument.*

DATES: The meeting will be held at 6:00 p.m. on August 15, 2016.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi. Interested parties may also attend via teleconference by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**; or via video conference at the Delta Ranger District, 68 Frontage Road, Rolling Fork, Mississippi.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Bienville Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Michael Esters, Designated Federal Officer, by phone at 601–469–3811 or via email *mesters@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 5, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Michael T. Esters, Designated Federal Officer, Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi 39074; by email to *mesters@fs.fed.us* or via facsimile to 601–469–2513.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: July 14, 2016.

Michael T. Esters,

Designated Federal Officer.

[FR Doc. 2016–17115 Filed 7–19–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Annual Capital Expenditures Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before September 19, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Valerie Mastalski, U.S. Census Bureau, Room HQ–8K041, Washington, DC 20233; (301) 763–3317 (or via the Internet at *Valerie.Cherry.Mastalski@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to conduct the 2016 through 2018 Annual Capital Expenditures Survey (ACES). The annual survey collects data on fixed assets and depreciation, sales and receipts, capitalized computer software, and capital expenditures for new and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending for non-farm companies, non-governmental companies, organizations, and associations operating in the United States. Both employer and nonemployer companies are included in the survey.

The Bureau of Economic Analysis, the primary Federal user of the ACES data, uses these data in refining and evaluating annual estimates of investment in structures and equipment in the national income and product accounts, compiling annual input-output tables, and computing gross domestic product by industry. The Federal Reserve Board uses these data to improve estimates of investment indicators for monetary policy. The Bureau of Labor Statistics uses these data to improve estimates of capital stocks for productivity analysis.

Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

Planned changes from the previous ACES are the collection of capital expenditures data solely by electronic reporting, and the collection of capital expenditures by type of structure and type of equipment in the 2017 ACES only. Every five years, for years ending in “3” and “8”, detailed data by types of structures and types of equipment have been collected from companies with employees. In 2010, it was decided that this detailed data should be collected for years ending in “2” and “7” beginning in 2013, to align with the years in which the Economic Census is conducted.

II. Method of Collection

For the 2012 and prior ACES data collection; the Census Bureau used mail out/mail back survey forms to collect data. For the 2013 ACES, the Census Bureau collected data from employer companies primarily through electronic reporting and continued to use mail out/ mail back survey forms to collect data from nonemployer companies. Beginning with the 2014 ACES, the Census Bureau collected data from both employer and nonemployer companies primarily through electronic reporting. Companies were asked to respond to the survey within 30 days of the initial mailing. Letters and/or telephone calls encouraging participation were directed to companies that had not responded by the designated time.

The Census Bureau will continue collecting the ACES data from employer and nonemployer companies solely through electronic reporting. Employer companies will complete the ACE–1 electronic reporting instrument. Nonemployers will complete the ACE–2 electronic reporting instrument. All companies will receive a notification letter containing their User ID and password, and will be directed to report online through the Census Bureau’s Business Help Site. The online reporting instruments are an electronic version of the paper data collection instruments, which will no longer be used and are tailored to the company’s diversity of operations and number of industries with payroll.

The Census Bureau will continue to ask both companies with employees and nonemployer companies to respond to the survey within 30 days. Reminder letters and/or telephone calls encouraging participation will continue to be directed to all companies that have not responded by the designated time.

III. Data

OMB Control Number: 0607–0782.

Form Number: ACE–1 and ACE–2.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations, non-profit institutions.

Estimated Number of Respondents: Approximately 75,000 (45,000 employer companies, and 30,000 nonemployer businesses).

Estimated Time Per Response: The average for all respondents is 1.96 hours. For employer companies completing form ACE–1, the range is 2 to 16 hours, averaging 2.59 hours. For companies completing form ACE–2, the range is less than 1 hour to 2 hours, averaging 1 hour.

Estimated Total Annual Burden Hours: 146,570 hours.

Estimated Total Annual Cost: $0.

Respondents’ Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 14, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–17077 Filed 7–19–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 14, 2016, the Department of Commerce (the "Department") published the preliminary results of the 2014–2015 administrative review ("AR") of the antidumping duty order on silicon metal from the People's Republic of China ("PRC"). *See Silicon Metal From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 13326 (March 14, 2016) ("*Preliminary Results*"). The period of review ("POR") is June 1, 2014, through May 31, 2015. The AR covers two PRC exporters of subject merchandise, Shanghai Jinneng International Trade Co. Ltd. ("Shanghai Jinneng") and Shanghai Jinfeng Hardware Plastics Co. Ltd. ("Shanghai Jinfeng"). The Department invited interested parties to comment on the *Preliminary Results.* We received comments from Globe Metallurgical Inc. ("Petitioner") which agreed with our *Preliminary Results* in the administrative review. No other party commented. Accordingly, our final results remain unchanged from the *Preliminary Results.*

DATES: Effective July 20, 2016.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Background

As noted above, on March 14, 2015, the Department published the *Preliminary Results* of the AR of the antidumping duty order on silicon metal from the PRC covering the period June 1, 2014, through May 31, 2015. On April 13, 2015, Petitioner filed briefs in the AR. No other parties submitted comments on the *Preliminary Results* in the AR.

Scope of the Order

The merchandise covered by the order is silicon metal containing at least 96.00 percent, but less than 99.99 percent of silicon by weight. Also covered by the order is silicon metal containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight (58 FR 27542, May 10, 1993). Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule ("HTS") as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. Although the HTS numbers are provided for convenience and customs purposes, the written description remains dispositive.

Analysis of the Comments Received

Petitioner's case brief addressed no issues beyond agreeing with the Department's preliminary findings and draft customs instructions. In the *Preliminary Results,* the Department determined that the two companies under review, Shanghai Jinneng and Shanghai Jinfeng, did not establish their eligibility for separate rate status and would be treated as part of the PRC-wide entity.[1] In these final results of review, we have continued to treat these two companies as part of the PRC-wide entity. We are adopting the Preliminary Decision Memorandum as the Final Issues and Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Results Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We intend to instruct CBP to liquidate POR entries of subject merchandise exported by Shanghai Jinneng and Shanghai Jinfeng at the PRC-wide entity rate, which is 139.49 percent.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of the review, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not named above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including Shanghai Jinneng and Shanghai Jinfeng, the cash deposit rate will be the rate for the PRC-wide entity, which is 139.49 percent; (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which

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[1] *See Preliminary Results.*

continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice of the final results of this antidumping duty administrative review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: July 11, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–16948 Filed 7–19–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice; prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent Application No. 15/188,211, titled ''Acousto-Microwave System for Determining Mass or Leak of Gas in a Vessel and Process for Same,'' (NIST Docket No. 15–010US1) to Western Energy Support & Technology, Inc. The grant of the license would be for leak rate testing and gas flow standards fields of uses.

FOR FURTHER INFORMATION CONTACT: Jeffrey DiVietro, National Institute of Standards and Technology, Technology Partnerships Office, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899, (301) 975–8779, *jeffrey.divietro@nist.gov.*

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The Patent Application was filed on June 21, 2016 and describes systems and methods for determining a quantity of gas in a container.

Dated: July 14, 2016.

Phillip Singerman,

Associate Director for Innovations and Industry Services.

[FR Doc. 2016–17106 Filed 7–19–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE746

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Ecosystem and Ocean Planning Committee will hold a public meeting.

DATES: The meeting will be held on Friday, July 29, 2016, from 9 a.m. to 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held via Webinar, at (*http://mafmc.adobeconnect.com/eop072916/*), with a telephone audio connection (provided when connecting). Information on how to connect via Webinar will be posted to *www.mafmc.org.* Public access to the Webinar will be provided at the Council office, 800 State Street, Suite 201, Dover, DE.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site, at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Agenda

The purpose of the meeting is to discuss and provide comments on the Council's Ecosystem Approach to Fisheries Management Guidance Document which will be presented to the Council for approval at its August 2016 meeting in Virginia Beach, VA. These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17134 Filed 7–19–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2014–OS–0039]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel & Readiness, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel & Readiness, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 19, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive,

Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Family Readiness Policy, ATTN: Program Manager, Spouse Education & Career Opportunities Program, 4800 Mark Center Drive, Suite 03G15, Alexandria, VA 22350–2300.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Military Spouse Employment Partnership (MSEP) Career Portal; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to allow MSEP Partners to search for military spouse candidates and for military spouses to directly search for employment opportunities with MSEP Partners.

Affected Public: Military spouse users of the MSEP Career Portal, MSEP Partners, Companies

Annual Burden Hours:

Military Spouses = 16,500
MSEP Partners = 125
Companies = 38
Total = 16,663

Number of Respondents:

Military Spouses = 22,000 military spouses
MSEP Partners = 300 partners
Companies = 150 companies
Total = 22,450 respondents

Responses per Respondent: 1.

Average Burden per Response:

Military Spouses = 45 minutes
MSEP Partners = 25 minutes
Companies = 15 minutes
Total = 85 minutes

Frequency:

Military Spouses = On occasion
MSEP Partners = On occasion
Companies = Once

The Military Spouse Employment Partnership (MSEP) Career Portal is the sole web platform utilized to connect military spouses with companies seeking to hire military spouse employees. Participating companies, called MSEP Partners, are vetted and approved participants in the MSEP Program and have pledged to recruit, hire, promote and retain military spouses in portable careers. MSEP is a targeted recruitment and employment partnership that connects American businesses with military spouses who possess essential 21st-century workforce skills and attributes and are seeking portable, fulfilling careers. The MSEP program is part of the overall Spouse Education and Career Opportunities (SECO) program which falls under the auspices of the office of the Deputy Assistant Secretary of Defense for Military Community & Family Policy.

This program was developed in compliance with 10 U.S. Code 1784 Employment Opportunities for Military Spouses which states:

(f) Private-Sector Employment.—The Secretary of Defense—

(1) shall seek to develop partnerships with firms in the private sector to enhance employment opportunities for spouses of members of the armed forces and to provide for improved job portability for such spouses, especially in the case of the spouse of a member of the armed forces accompanying the member to a new geographical area because of a change of permanent duty station of the member; and

(2) shall work with the United States Chamber of Commerce and other appropriate private-sector entities to facilitate the formation of such partnerships.

Dated: July 15, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17118 Filed 7–19–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, August 12, 2016; 12:00 Noon to 3:00 p.m.

ADDRESSES: Teleconference. Instructions for access can be found on the HEPAP Web site: *http://science.energy.gov/hep/hepap/meetings/* or by contacting Dr. John Kogut by email at: *john.kogut@science.doe.gov* or by phone: (301) 903–1298.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Panel: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following:

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the Web site below for updates and information on how to view the meeting. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut at 301–903–1298 or by email at: *John.Kogut@science.doe.gov*. You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of High Energy Physics Advisory Panel Web site, at: (*http://science.energy.gov/hep/hepap/meetings/*).

Issued at Washington, DC, on July 14, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–17128 Filed 7–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Draft Outline for the Proposed Joint U.S.-Canadian Electric Grid Strategy

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of request for public comment.

SUMMARY: With this notice, the U.S. Department of Energy (DOE) seeks public comment on the proposed content and scope of the Joint U.S.-Canadian Electric Grid Strategy as indicated by the draft outline presented here.

DOE seeks public comment including the following: (1) Suggestions for how best to describe the cyber and physical risks to electric grid systems, as well as ways to address and mitigate those risks; (2) suggestions for ensuring that the outlined strategic goals and objectives are at the appropriate level for a joint U.S.-Canadian strategy; (3) suggestions for actions under the proposed joint strategy that Federal departments and agencies should take to make the grid more secure and resilient; (4) suggestions for new ways to secure the future grid across North America, as outlined in the final section; and (5) suggestions for timelines to use when considering future planning and investment opportunities.

Supplementary background information, additional details, and instructions for submitting comments can be found below.

DATES: Comments must be received on or before August 10, 2016.

ADDRESSES: Comments can be submitted by either of the following methods and must be identified as "Joint Strategy." By email: *jointgridstrategy@hq.doe.gov.* Include "Joint Strategy" in subject line of the message. Submitters may enter text or upload files in response to this notice. By mail: Stewart Cedres, Office of Electricity Delivery & Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 6E–092, 1000 Independence Avenue SW., Washington, DC 20585. Note: Delivery of the U.S. Postal Service mail to DOE may be delayed by several weeks due to security screening. DOE, therefore, encourages those wishing to comment to submit comments electronically by email.

Instructions: Response to this Request for Comment is voluntary. Respondents need not reply to all questions or topics; however, they should clearly indicate the question or topic to which they are responding. Responses may be used by the U.S. Government for program planning on a non-attribution basis. DOE therefore requests that no business proprietary information or copyrighted information be submitted in response to this Request for Comment. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Stewart Cedres, Office of Electricity Delivery & Energy Reliability, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–2066, *jointgridstrategy@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: During the March 2016 visit by Canadian Prime Minister Justin Trudeau, in the "U.S.-Canada Joint Statement on Climate, Energy, and Arctic Leadership," the U.S. and Canada agreed to "[d]evelop a joint U.S.-Canadian strategy for strengthening the security and resilience of the North American electricity grid [and] work together to strengthen the security and resilience of the electric grid, including against the growing threat from cyber-attacks and climate change impacts." The Departments of Energy and Homeland Security are co-leading an interagency effort, including our Canadian colleagues, to develop this proposed joint strategy.

As a first step, Federal interagency writing teams have developed an outline for the proposed joint strategy that consists of three overarching strategic goals and objectives in support of achieving those goals. The purpose of the draft outline is to give the public an initial view of potential goals, objectives, and actions that could be taken to strengthen the security and resilience of the electric grid. In developing the outline, the writing teams used a "baseline" document consisting of analytical work that supports both the development of this proposed strategy and the next iteration of the Quadrennial Energy Review.

DOE will collate public comments received on the outline. The comments will inform the preparation of the full draft joint strategy and accompanying action plan, which is scheduled to be released in December 2016.

Comments are sought on the proposed overarching outline that will frame the joint strategy. Additional suggestions will be reviewed as they relate to the proposed structure of the document.

Following is a proposed high-level and draft outline intended to guide the scope and content of the Joint U.S.-Canadian Electric Grid Strategy. DOE seeks public comments on all aspects of this draft outline. The proposed outline is presented here in five parts: (1) Introduction and Context for the Joint U.S.-Canadian Electric Grid Strategy; (2) Goal 1: Protect Today's Grid and Enhance Preparedness; (3) Goal 2: Manage Contingencies and Enhance Response and Recovery; (4) Goal 3: Build a More Secure and Resilient Future Grid; and (5) Conclusion.

1. Introduction and Context for the Joint U.S.-Canadian Electric Grid Strategy

The introductory and context-setting sections of the joint strategy will describe the context for the joint strategy.

2. Goal 1: Protect Today's Grid and Enhance Preparedness

This section will outline opportunities to avoid, deter, and mitigate risks before they impact the grid. This includes information sharing between and among owners, operators, public, private and third-party participants whose protection of critical assets would benefit from actionable threat and hazard information and would provide information utilization for prudent and efficient security investments. This section will also highlight the importance of coordinating ongoing law enforcement, emergency management, reliability coordination, and monitoring and detection activities, the practice of which will improve protection capabilities.

This section will also address the method of preparedness that identifies can't-lose aspects of the system to mitigate the outer limit of tolerable impacts to the grid. This section will address major isolated as well as potentially cascading events that create out-and-out system failure or balloon into major regional or multi-system impacts. This section will examine how to create necessary incentives and investments to engage the protective measures for outlier events. The section will close by examining the electric grid's interdependencies with other critical systems and functions of the nations' economies and societies. Given our economic and social reliance on electricity, the strategy will identify the importance of securing the grid in the broader context of our joint and domestic national security goals.

○ Objective 1. Enhance Information Sharing

i. Enhance information sharing between government and industry.

ii. Build organizational capacity to improve government, and industry information sharing and support to improve management of risk critical to the success of business mission and goals.

○ Objective 2. Develop and Coordinate Existing Forensic and Law Enforcement Capabilities

i. Improve tools, processes, and coordination among relevant government entities and industries for monitoring, detecting, analyzing, reporting, defending and mitigating threats to the electric grid.

○ Objective 3. Deter Major Isolated and Cascading Events

i. Protect critical assets from relevant adversarial, natural, and technological threats to prevent and mitigate power loss and system failure.

ii. Develop guiding principles for automatic and manual means of preventing cascading blackouts (System Operations).

○ Objective 4. Align Standards, Incentives and Investment with Security Goals

i. Align utility incentives for planning and investment with regulatory processes and tools for prudent cost recovery, including tools for security valuation.

○ Objective 5. Understand and Mitigate Vulnerabilities From Interdependencies With Other Critical Infrastructures

i. Mitigate and reduce security risks/vulnerabilities caused by interdependence between grid technologies and other infrastructures, including telecom, water, and natural gas.

ii. Identify and manage impacts to other critical societal functions (*e.g.*, defense).

3. Goal 2: Manage Contingencies and Enhance Response and Recovery Efforts

This section will address response and recovery options during and after an incident, examining public and private resources available, including through mutual assistance efforts for physical and cyber capabilities. This section will also highlight the complexity and potential issues with supply chains, which are compounded in an emergency. Finally, this section will highlight the importance of adaptation through recovery and rebuilding efforts, restoring capabilities through smarter, more efficient, and forward-looking solutions.

○ Objective 1. Improve Emergency Response and Continuity

i. Enhance public and private resources for response to and recovery from major loss-of-power events.

○ Objective 2. Develop or Enhance Mutual Assistance for Physical and Cyber Threats

i. Foster robust mutual assistance programs for physical grid assets, and develop a cybersecurity mutual assistance program.

○ Objective 3. Identify Dependencies and Supply Chain Needs During an Emergency

i. Address effects from power outages, such as loss of services.

○ Objective 4. Recover and Rebuild

i. Adapt via recovery to result in more resilient investments, practices and processes.

4. Goal 3: Build a More Secure and Resilient Future Grid

The final section of the strategy will take on the challenge and opportunities to adapting through recovery efforts, underscoring the end-goal of grid resilience. The first part of the final section will explore post-incident actions in the context of evolving grid design, technologies, and a changing climate (that is, the potential impact of more frequent and severe natural disasters). The first part of this section will also address the opportunities to develop and advance the deployment of tools and technologies to address the security vulnerabilities addressed in this strategy.

The second part of this final section will outline opportunities to integrate security and resilience into planning, investment, regulatory- and policy-decision making for joint, cross-border security goals. This includes enhancing modeling and risk analysis capabilities to characterize vulnerabilities for decision-making and investments, suggesting ways to align utility and market incentives, and addressing workforce risks and opportunities for evolving technical knowledge needs. Finally, this section will point to the importance of pursuing optimal domestic security goals to coordinate cross-border where possible, and noting where domestic-specific goals do not lend themselves to joint coordination.

○ Objective 1. Understand and Manage New and Evolving Risks From Grid Technologies and Grid Design

i. Identify, understand, and, to the extent possible, neutralize emerging threats (including through supply chains).

ii. Ensure that continued integration of grid and IT infrastructures accounts for the security benefits and challenges of that enhanced integration.

iii. Meet national security goals in a changing climate and energy landscape.

- Improve preparedness in the context of increased natural disaster intensity and frequency and
- Integrate security considerations into energy policy making, as well as utility and project planning, design, and implementation.

○ Objective 2. Develop and Deploy Security and Resilience Tools and Technologies

i. Ensure that the technological and institutional and architectural evolution of the grid enhances security and resilience.

ii. Be resilient to, and secure against, a range of grid threats.

iii. Coordinate with industry and operator practices to detect and mitigate grid anomalies quickly and effectively.

○ Objective 3. Integrate Security and Resilience Into Planning, Investment, Regulatory- and Policy-Decision Making, and Coordinate Cross-Border Grid Integration Between the United States and Canada

i. Enhance modeling and risk analysis capabilities to better characterize grid vulnerabilities, understand impacts of loss-of-power events, and support risk-informed decisions, including investments.

ii. Align utility and market participant incentives for planning and investment with regulatory processes and tools for prudent cost recovery, including tools for security valuation.

iii. Continue to pursue optimal domestic planning, investment, regulatory- and policy-decision making for security and resilience, noting where domestic-specific approach do not lend themselves to joint coordination.

iv. Address the need to reinforce existing and develop new workforce capabilities.

5. Conclusion

The conclusion of the strategy will summarize major findings and highlight the way forward.

DOE seeks public comments on all of the draft outline sections described above for the Joint U.S.-Canadian Electric Grid Strategy.

Authority: Presidential Policy Directive 21—Critical Infrastructure Security and Resilience (PPD–21), Presidential Policy Directive 8—National Preparedness (PPD–8), Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94) and Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act (Pub. L. 93–288) as amended.

Issued at Washington, DC on July 14, 2016.

Patricia A. Hoffman,

Assistant Secretary, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–17133 Filed 7–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Certification Notice—241]

Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of filing.

SUMMARY: On June 30, 2016, C4GT, LLC, as owner and operator of a new baseload electric generating powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations. FUA and regulations thereunder require DOE to publish a notice of filing of self-certification in the **Federal Register**.

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence at (202) 586–5260.

SUPPLEMENTARY INFORMATION: Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to FUA in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. 42 U.S.C. 8311.

The following owner of a proposed new baseload electric generating powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

OWNER: C4GT, LLC,
CAPACITY: 1060 megawatts (MW)
PLANT LOCATION: Near Roxbury, VA off of VA106
IN–SERVICE DATE: Second quarter 2020

Issued in Washington, DC on July 14, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–17142 Filed 7–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2302–005.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–07–14_SSR 2016 Revisions Follow-Up Compliance Filing to be effective 9/24/2012.
Filed Date: 7/14/16.
Accession Number: 20160714–5045.
Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER13–1896–010; ER14–594–008.
Applicants: AEP Generation Resources Inc., Ohio Power Company.
Description: Notice of change in status of AEP Generation Resources Inc. and Ohio Power Company, et al.
Filed Date: 5/27/16.
Accession Number: 20160527–5263.
Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER16–2193–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Georgia-Pacific Construction Agreement—Camas to be effective 9/13/2016.
Filed Date: 7/14/16.
Accession Number: 20160714–5072.
Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER16–2195–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Service Agreement Nos. 13 and 14 of Pacific Gas and Electric Company.
Filed Date: 7/14/16.
Accession Number: 20160714–5089.
Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER16–2196–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: GCL Lincoln Power SGIA Termination Filing to be effective 7/1/2016.

Filed Date: 7/14/16.

Accession Number: 20160714–5091.

Comments Due: 5 p.m. ET 8/4/16.

Docket Numbers: ER16–2197–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Service Agreement No. 3831, Queue Position Z1–072 to be effective 6/14/2016.

Filed Date: 7/14/16.

Accession Number: 20160714–5108.

Comments Due: 5 p.m. ET 8/4/16.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–1046–000.

Applicants: Tate & Lyle Ingredients Americas LLC.

Description: Form 556 of Tate & Lyle Ingredients Americas LLC.

Filed Date: 7/13/16.

Accession Number: 20160713–5102.

Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17105 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1649–000]

California Independent System Operator Corporation; Notice of Technical Conference

By order issued in this proceeding on June 1, 2016,[1] the Federal Energy Regulatory Commission (Commission) directed its staff to convene a technical conference. The conference will be held on September 30, 2016, at the Commission's offices at 888 First Street NE., Washington, DC 20426 beginning at 10:00 a.m. (Eastern Time). The conference will be led by Commission staff, and Commissioners may attend.

In the June 1 Order, the Commission accepted, subject to condition and further compliance, California Independent System Operator Corporation's proposal to implement an interim set of measures to address limitations in the natural gas delivery system due to the limited operability of the Aliso Canyon natural gas storage facility in southern California. The Commission directed its staff to convene a technical conference to facilitate discussion regarding the efficacy of these measures and the need for additional and/or longer-term measures to address any ongoing limitations at the Aliso Canyon facility.

Further details of the conference will be specified in a subsequent notice. All interested persons may attend the conference, and registration is not required. However, in-person attendees are encouraged to register on-line at *https://www.ferc.gov/whats-new/registration/09-30-16-form.asp.*

This conference will be transcribed and webcasted. Transcripts will be available immediately for a fee from Ace Reporting Company (202) 347–3700). A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call (866) 208–3372 (toll free) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Virginia Castro at (202) 502–8491, *virginia.castro@ferc.gov,* or Sarah McKinley at (202) 502–8368, *sarah.mckinley@ferc.gov.*

Dated: July 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17124 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] *Cal. Indep. Sys. Operator Corp.,* 155 FERC ¶ 61,224 (2016) (June 1 Order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–473–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on June 29, 2016, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking authority to construct, own and operate the Bayway Lateral which consists of approximately 2,300 feet of 24-inch-diameter lateral pipeline facilities and related appurtenances to enable Texas Eastern to provide up to 300,000 dekatherms per day (Dth/d) of firm transportation service to Phillips 66 Company's Bayway Refinery and the co-located cogeneration plant owned by Cogen Technologies Linden Venture, L.P. located in Linden, New Jersey (Bayway Lateral Project), all as more fully set forth in the application. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the proposed project should be directed to Berk Donaldson, General Manager, Rates and Certificates, at Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642 or at (713) 627–4488 (phone), or (713) 627–5947 (facsimile).

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on August 4, 2016.

Dated: July 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17122 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–374–000]

Buena Vista Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Buena Vista Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 3, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17100 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–148–000.
Applicants: Florida Power & Light Company.
Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action of Florida Power & Light Company.
Filed Date: 7/13/16.
Accession Number: 20160713–5134.
Comments Due: 5 p.m. ET 8/3/16.

Docket Numbers: EC16–149–000.
Applicants: San Diego Gas & Electric Company.
Description: Application for Authorization of Transaction Pursuant to Section 203 of the Federal Power Act and Request for Expedited Action of San Diego Gas & Electric Company.
Filed Date: 7/13/16.
Accession Number: 20160713–5136.
Comments Due: 5 p.m. ET 8/3/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2170–000.
Applicants: Duke American Transmission Company LLC.
Description: Request for Limited Waiver and Request for Shortened Notice Period of Duke American Transmission Company LLC.
Filed Date: 7/8/16.
Accession Number: 20160708–5227.
Comments Due: 5 p.m. ET 7/18/16.

Docket Numbers: ER16–2190–000.
Applicants: Brady Wind, LLC.
Description: Baseline eTariff Filing: Brady Wind, LLC Application for Market-Based Rates to be effective 10/1/2016.
Filed Date: 7/13/16.
Accession Number: 20160713–5124.
Comments Due: 5 p.m. ET 8/3/16.

Docket Numbers: ER16–2191–000.
Applicants: Brady Wind II, LLC.
Description: Baseline eTariff Filing: Brady Wind II, LLC Application for Market-Based Rates to be effective 11/1/2016.
Filed Date: 7/13/16.
Accession Number: 20160713–5125.
Comments Due: 5 p.m. ET 8/3/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17104 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14781–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 4, 2016, Energy Resources USA, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located at the Commonwealth of Kentucky's Kentucky River Lock and Dam #8, located on the Kentucky River in Garrard County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) The existing 309-foot-long, 31-foot-high lock and dam, including an inoperable stone masonry lock; (2) three 3.96-foot-high, 87.50-foot-long hydraulic flashboards to be installed on the crest of the 262.5-foot-long spillway; (3) a reservoir with a surface area of 573 acres and a storage capacity of 14,020 acre-feet at a normal surface elevation of 31 feet mean sea level (msl); (4) a 770-foot-long, 300-foot-wide intake channel with a 85-foot-long retaining wall; (5) a 131-foot-long, 82-foot-wide powerhouse, to be built adjacent to the spillway end of the dam, containing two generating units with a total capacity of 11 megawatts; (6) a 1000-foot-long, 220-foot-wide tailrace with a 40-foot-long retaining wall; (7) a 4.16/69 kilo-Volt (kV) substation; and (8) a 3-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 59,180 megawatt-hours.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA, Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134, (954) 248–8425.

FERC Contact: Dustin Wilson, *Dustin.Wilson@ferc.gov,* (202) 502–6528.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14781–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17119 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2191–000]

Brady Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Brady Wind II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 3, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17102 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2190–000]

Brady Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Brady Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 3, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17101 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RA16–2–000]

Fluke Corporation; Notice of Filing

Take notice that, on July 8, 2016, Fluke Corporation (Fluke) filed a Petition for Review of Denial of Adjustment Request, pursuant to section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 7194(b), and section 385.1004 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 385.1004. Fluke's petition requests review of the June 8, 2016 Decision and Order issued in Case Number EXC–16–0006 by the Department of Energy's Office of Hearings and Appeals. In addition, Fluke is concurrently requesting a hearing in accordance with section 385.1006 of the Commission's Rules of Practice and Procedure, 18 CFR 385.1006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 4, 2016.

Dated: July 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17120 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14780–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 04, 2016, Energy Resources USA, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located at the Kentucky River Authority's Kentucky River Lock and Dam #10, located on the Kentucky River in Clark County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) The existing 890-foot-long, 37-foot-high concrete lock and dam; (2) three 3.97-foot-high, 82-foot-long hydraulic flashboards to be installed on the crest of the 246-foot-long spillway; (3) a reservoir with a surface area of 573 acres and a storage capacity of 14,020 acre-feet at a normal surface elevation of 37 feet mean sea level (msl); (4) a 770-foot-long, 300-foot-wide intake channel with a 85-foot-long retaining wall; (5) a 98-foot-long, 115-foot-wide powerhouse, to be built adjacent to the spillway end of the dam, containing two generating units with a total capacity of 9 megawatts; (6) a 1000-foot-long, 220-foot-wide tailrace with a 40-foot-long retaining wall; (7) a 4.16/69 kilo-Volt (kV) substation; and (8) a 0.15-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 48,690 megawatt-hours.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA, Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134, (954) 248–8425.

FERC Contact: Dustin Wilson, *Dustin.Wilson@ferc.gov,* (202) 502–6528.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14780–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17127 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14775–000]

Marine Renewable Energy Collaborative of New England; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 20, 2016, the Marine Renewable Energy Collaborative of New England filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Cape Cod Canal and Bourne Tidal Test Site (Cape Cod Canal Test Site or project) to be located on the Cape Cod Canal, near the Town of Bourne, in Barnstable County, Massachusetts. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' permission.

The proposed project would consist of: (1) A 45-foot-high, 23-foot-wide support structure; (2) a 25-kilowatt turbine-generator unit; (3) a 500 to 7,500-foot-long, 13.2-kilovolt (kV) transmission; and (4) appurtenant facilities. The estimated average annual generation of the project would be 54.7 gigawatt-hours. The project would occupy approximately 0.5 acres of federal land under the jurisdiction of the U.S. Army Corps of Engineers.

Applicant Contact: Mr. John Miller, Executive Director, Marine Renewable Energy Collaborative of New England, P.O. Box 479, Marion, Massachusetts 02738; phone: (508) 728–5825.

FERC Contact: Michael Watts; phone: (202) 502–6123; email: *michael.watts@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14775–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14775) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17126 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

Grande Prairie Wind, LLC	EG16–81–000.
La Frontera Holdings, LLC	EG16–82–000.
Boulder Solar Power, LLC	EG16–83–000.
Electra Wind, LLC	EG16–84–000.
Osborn Wind Energy, LLC	EG16–85–000.
Oliver Wind III, LLC	EG16–86–000.
Peak View Wind Energy LLC	EG16–87–000.
Blythe Solar II, LLC	EG16–88–000.
Elevation Solar C, LLC	EG16–89–000.

Take notice that during the month of June 2016, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: July 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2016–17099 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14514–002]

Community of Elfin Cove, DBA Elfin Cove Utility Commission; Notice of Successive Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 1, 2016, the Community of Elfin Cove, DBA Elfin Cove Utility Commission (Elfin Cove) filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of the proposed Crooked Creek and Jim's Lake Hydroelectric Project (project) to be located on Crooked Creek and Jim's Lake, 70 miles west of Juneau, in the unincorporated Sitka Recording District, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of two developments, the Upper System and the Lower System.

The Upper System would consist of: (1) A 20-foot-long, 4-foot-wide, 4-foot-tall diversion structure to divert up to 5 cubic feet per second (cfs) from Crooked Creek; (2) a 1,200-foot-long, 1-foot-diameter buried penstock; (3) a 20-foot-long, 20-foot-wide powerhouse containing a 35-kilowatt (kW) crossflow turbine/generator; (4) a 50-foot-long, 8-foot-wide, 3-foot-deep cobble-lined tailrace discharging flows into Jim's Lake; and (5) appurtenant facilities.

The Lower System would consist of: (1) A 220-foot-long, 20-foot-high rock-fill embankment dam and intake at the outlet to Jim's Lake; (2) a 2,050-foot-long, 1.2-foot-diameter buried penstock; (3) a 24-foot-long, 24-foot-wide powerhouse containing a 105-kW Pelton turbine/generator; (4) a 150-foot-long, 8-foot-wide, 3-foot-deep cobble-lined tailrace discharging flows into Port Althorp; and (5) appurtenant facilities.

The 300-foot-long, 7.2/12.47 kV buried transmission line from the upper powerhouse would converge with the 2,800-foot-long, 7.2/12.47 kV buried transmission line from the lower powerhouse into a single 8,400-foot-long, 7.2/12.47 kV buried transmission line extending to Elfin Cove's existing 7.2/12.47-kV distribution network.

The estimated annual generation of the project would be 655.5 megawatt-hours. The project would be partially located on 60 acres of federal lands managed by the U.S. Forest Service in the Tongass National Forest.

Applicant Contact: Joel Groves, Polarconsult Alaska, Inc., 1503 West 33rd Avenue, Number 310, Anchorage, AK 99503; phone: (907) 258–2420 x204.

FERC Contact: Sean O'Neill; phone: (202) 502–6462.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14514–002.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14514) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17125 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–474–000]

High Point Gas Transmission, LLC; Notice of Application

Take notice that on July 1, 2016, High Point Gas Transmission, LLC, 1400 16th Street, Suite 310, Denver, Colorado 80202, filed in Docket No. CP16–474–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by sale to Cayenne Pipeline, LLC (Cayenne) approximately 61.3 miles of 12–22-inch-diameter pipeline facilities in Plaquemines and St. Bernard Parishes, Louisiana. Upon completion of the sale, Cayenne will make certain changes to the facilities to enable it to transport natural gas liquids, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning these applications may be directed to Dennis J. Kelly, Senior Counsel, High Point Gas Transmission, LLC, 1400 16th Street, Suite 310, Denver, Colorado 80202, by telephone at (720) 457–6076.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on August 4, 2016.

Dated: July 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–17123 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–93–000; EC16–94–000.

Applicants: Atlas Power Finance, LLC, Dynegy Inc., Energy Capital Partners III, LLC, GDF Suez Energy North America, Inc.

Description: Response to June 15, 2016 request for additional information of Atlas Power Finance, LLC, et al.

Filed Date: 7/8/16.

Accession Number: 20160708–5222.

Comments Due: 5 p.m. ET 7/29/16.

Docket Numbers: EC16–147–000.

Applicants: Alcoa Inc., Alcoa Power Generating Inc.

Description: Application for Authorization Under Section 203 of Alcoa Inc. and Alcoa Power Generating Inc.

Filed Date: 7/12/16.

Accession Number: 20160712–5213.

Comments Due: 5 p.m. ET 8/2/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–594–000; ER13–1874–000; ER14–95–000.

Applicants: Ohio Power Company, American Electric Power Service Corporation.

Description: Notice of change in status of American Electric Power Service Corporation, on behalf of Itself, AEP East Operating Companies and AEP Generation Resources Inc. relating to Waivers of the Commission's Affiliate Restrictions under, et al.

Filed Date: 5/2/16.

Accession Number: 20160502–5504.

Comments Due: 5 p.m. ET 8/3/16.

Docket Numbers: ER16–2181–000.

Applicants: PacifiCorp.

Description: Notice of Termination of PacifiCorp of Olene KBG, LLC Agreement for Long-Term Firm Point-to-Point Transmission Service.

Filed Date: 7/12/16.

Accession Number: 20160712–5084.

Comments Due: 5 p.m. ET 8/2/16.

Docket Numbers: ER16–2186–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Market-Based Triennial Review Filing: 2016 Triennial Update to be effective 9/12/2016.

Filed Date: 7/13/16.

Accession Number: 20160713–5020; 20160713–5055.

Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: ER16–2187–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–07–13_Schedule 2 Rule to Show Cause Compliance EL16–61 to be effective 6/22/2016.

Filed Date: 7/13/16.

Accession Number: 20160713–5027.

Comments Due: 5 p.m. ET 8/3/16.

Docket Numbers: ER16–2188–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Clatskanie PUD Transmission IC, Construct & Fac Maint Agmt to be effective 9/12/2016.

Filed Date: 7/13/16.

Accession Number: 20160713–5066.

Comments Due: 5 p.m. ET 8/3/16.

Docket Numbers: ER16–2189–000.

Applicants: NSTAR Electric Company.

Description: Initial rate filing: HQUS Transfer Agreement (2018–2020) to be effective 1/1/2018.

Filed Date: 7/13/16.

Accession Number: 20160713–5110.

Comments Due: 5 p.m. ET 8/3/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–43–000.

Applicants: Northern Pass Transmission LLC.

Description: Application for Authority to Issue Debt Securities of Northern Pass Transmission LLC.

Filed Date: 7/12/16.

Accession Number: 20160712–5182.

Comments Due: 5 p.m. ET 8/2/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 13, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17103 Filed 7–19–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0379; FRL–9948–76]

Sulfoxaflor; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the New Mexico Department of Agriculture to use the insecticide sulfoxaflor (CAS No. 946578–00–3) on pecans to control the black pecan aphid. The applicant proposes a use of a pesticide, sulfoxaflor, which is now considered to be unregistered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) because of the vacature of all sulfoxaflor registrations by the United States District Court for the Central District of California. In accordance with 40 CFR 166.24(a)(7), EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 4, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0379, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a federal or state agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The New Mexico Department of Agriculture has requested the EPA Administrator to issue a specific exemption for the use of sulfoxaflor to be applied to pecan orchards to control black pecan aphid. Information in accordance with 40 CFR part 166 was submitted as part of this request. The applicant's submission, which provides an explanation of the emergency situation as well as the proposed use pattern, can be found at *http://www.regulations.gov* in the following document "2016 FIFRA Section 18 Emergency Exemption for Use of Closer® *SC Insecticide on Pecans in New Mexico.*"

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use of a pesticide that has been subject to a judicial vacature. Further, this notice provides an opportunity for public comment on the application. The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific emergency exemption requested by the New Mexico Department of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 12, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–17162 Filed 7–19–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Items From Sunshine Act Meeting

July 14, 2016.

The following consent agenda has been deleted from the list of items scheduled for consideration at the Thursday, July 14, 2016, Open Meeting and previously listed in the Commission's Notice of July 7, 2016. The consent agenda has been adopted by the Commission.

* * * * *

Consent Agenda

The Commission will consider the following subjects listed below as a consent agenda and these items will not be presented individually:

1. *General Counsel: Title:* William J. Kirsch Request for Inspection of Records (FOIA Control No. 2015–368).

Summary: The Commission will consider a Memorandum Opinion and Order concerning the application for review filed by William J. Kirsch regarding a decision of the International Bureau's fee estimate for processing his Freedom of Information Act (FOIA) request.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–17181 Filed 7–18–16; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011275–039.

Title: Australia and New Zealand-United States Discussion Agreement.

Parties: CMA CGM, S.A. and ANL Singapore Pte Ltd. (acting as a single party); Hamburg-Süd KG; and MSC Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1200 Nineteenth St. NW.; Washington, DC 20036.

Synopsis: The amendment would delete Hapag-Lloyd AG as a party to the Agreement, remove an outdated reference to a former member from Appendix A, and revise Appendix B to the Agreement.

Agreement No.: 012067–016.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering Carriers GmbH & Co. KG and BBC Chartering & Logistic GmbH & Co. KG, as a single member; Chipolbrok (Chinese-Polish Joint Stock Shipping Company); Hanssy Shipping Pte. Ltd.; Hyundai Merchant Marine Co., Ltd.; Industrial Maritime Carriers, L.L.C.; Nordana Line A/S; and Rickmers-Linie GmbH & Cie. KG.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W.; New York, NY 10024.

Synopsis: The amendment would delete Hyundai Merchant Marine and Nordana Line A/S as parties to the U.S. Agreement and the worldwide HLC Agreement, and change the name of Rickmers-Linie GmbH & Co. KG to NPC Projects AS/Rickmers-Linie GmbH & Co. KG as a party to both Agreements.

Agreement No.: 012425.

Title: APL/ANL Space Charter Agreement.

Parties: ANL Singapore Pte Ltd.; APL Co. Pte Ltd; and American President Lines, Ltd.

Filing Party: Draughn B. Arbona, Esq; CMA CGM (America) LLC; 5701 Lake Wright Drive, Norfolk, VA 23502.

Synopsis: The agreement authorizes APL to charter space to ANL in the trade between China and Korea on the one hand, and the U.S. East Coast on the other hand.

By Order of the Federal Maritime Commission.

Dated: July 15, 2016.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–17079 Filed 7–19–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

[Docket No. 16–15]

World Imports, Ltd., World Imports Chicago, LLC, and World Imports South, LLC v. OEC Group New York; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by World Imports, Ltd., World Imports Chicago, LLC, and World Imports South, LLC (collectively "World Imports"), hereinafter "Complainants," against OEC Group New York ("OEC"), hereinafter "Respondent." Complainants state that they are corporations "formerly engaged in the business of buying furniture wholesale and selling it to retail distributors." Complainant alleges that Respondent is a New York corporation and a "freight forwarder/logistics provider" providing non-vessel-operating common carrier services.

Complainants allege that Respondent "was in possession of multiple landed shipments of merchandise for delivery" to Complainants but failed to release those goods on the basis of freight charges owed to Respondent for goods Respondent had "previously delivered and unconditionally released." Further Complainant alleges that Respondent has "transmogrified what would have been an unsecured claim in World Imports' bankruptcy proceedings into a secured maritime lien." Complainant alleges that Respondent has violated section 10(d)(1) of the Shipping Act, 46 U.S.C. 41102(c), which provides that a common carrier "may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

Complainant requests the following relief: "an order be made commanding OEC to: (1) Cease and desist from the aforesaid violations; (2) establish and put in force such practices as the Commission determines to be lawful and reasonable; (3) to pay to World Imports by way of reparations for the unlawful conduct herein described the sum of $172,075.50, with interest and attorney's fees or such other sum as the Commission may determine to be proper as an award of reparation; (4) to reimburse World Imports any sum it may be ordered to pay to OEC as a secured creditor in World Imports' bankruptcy case, insofar as such sums reflect charges, fees, or the like demanded in violation of Section (10)(d)(1); and (5) that such other and further order or orders be made as the Commission determines to be proper in the premises."

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/16-15.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by July 14, 2017, and the final decision of the Commission shall be issued by January 29, 2018.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–17088 Filed 7–19–16; 8:45 am]

BILLING CODE 6731–AA–P

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2016–03; Docket No. 2016–0002; Sequence 16]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Request for Membership Nominations

AGENCY: Office of Federal High-Performance Green Buildings, General Services Administration (GSA).

ACTION: Notice of solicitation of nominations for membership.

SUMMARY: The Administrator of the GSA established the Green Building Advisory Committee on June 20, 2011 (76 FR 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17123, or EISA), in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2). As the two-year commitments of some members of the Committee are expiring, this notice solicits additional qualified candidates for membership.

DATES: *Effective:* July 20, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Sandler, Office of Federal High Performance Green Buildings, GSA, 202–219–1121.

SUPPLEMENTARY INFORMATION:

Background

The Green Building Advisory Committee (hereafter, "the Committee") provides advice to GSA as a mandatory Federal advisory committee, as specified in EISA and in accordance with the provisions of FACA. Under this authority, the Committee advises GSA on how the Office of Federal High-Performance Green Buildings can most effectively accomplish its mission. Extensive information about the Committee, including current members, is available on GSA's Web site at *http://www.gsa.gov/gbac.*

Membership requirements: The EISA statute authorizes the Committee and identifies the categories of members to be included. EISA names 10 Federal agencies and offices to be represented on the Committee, and GSA works directly with these agencies to identify their qualified representatives. This notice is focused exclusively on non-Federal members. EISA provides that, in addition to its required Federal members, the Committee shall include "other relevant agencies and entities, as determined by the Federal Director." These are to include at least one representative of each of the following categories:

> "(i) State and local governmental green building programs;
>
> (ii) Independent green building associations or councils;
>
> (iii) Building experts, including architects, material suppliers, and construction contractors;
>
> (iv) Security advisors focusing on national security needs, natural disasters, and other dire emergency situations;
>
> (v) Public transportation industry experts; and
>
> (vi) Environmental health experts, including those with experience in children's health."

EISA further specifies: "the total number of non-Federal members on the Committee at any time shall not exceed 15."

Member responsibilities: Approved Committee members will be appointed to terms of either 2 or 4 years with the possibility of membership renewals as appropriate. Membership is limited to the specific individuals appointed and is non-transferrable. Members are expected to attend all meetings in person, review all Committee materials, and actively provide their advice and input on topics covered by the Committee. Committee members will not receive compensation or travel reimbursements from the Government except where need has been demonstrated and funds are available.

Solicitation for members: This notice provides an opportunity for individuals to present their qualifications and apply for an open seat on the Committee. GSA will ask Committee members whose terms are expiring to re-apply if they are interested in continuing to serve on the Committee. GSA will review all applications and determine which candidates are likely to add the most value to the Committee based on the criteria outlined in this notice.

At a minimum, prospective members must have:

—At least 5 years of high-performance green building experience, which may include a combination of project-based, research and policy experience.

—Academic degrees, certifications and/or training demonstrating green building and related sustainability and real estate expertise.

—Knowledge of Federal sustainability and energy laws and programs.

—Proven ability to work effectively in a collaborative, multi-disciplinary environment and add value to the work of a committee.

—Qualifications appropriate to specific statutory requirements (listed above).

No person who is a Federally-registered lobbyist may serve on the Committee, in accordance with the Presidential Memorandum "Lobbyists on Agency Boards and Commissions" (June 18, 2010).

Nomination process for Advisory Committee appointment: There is no prescribed format for the nomination. Individuals may nominate themselves or others. A nomination package shall include the following information for each nominee: (1) A letter of nomination stating the name and organizational affiliation(s) of the nominee, membership capacity he/she will serve (see statutory categories above), nominee's field(s) of expertise, and description of interest and qualifications; (2) A professional resume or CV; and (3) Complete contact information including name, return address, email address, and daytime telephone number of the nominee and nominator. GSA will consider nominations of all qualified individuals to ensure that the Committee includes the areas of green building subject matter expertise needed. GSA reserves the right to choose Committee members based on qualifications, experience, Committee balance, statutory requirements and all other factors deemed critical to the success of the Committee. Candidates may be asked to provide detailed financial information to permit evaluation of potential conflicts of interest that could impede their work on the Committee, in accordance with the requirements of FACA. All nominations must be submitted in sufficient time to be received by 5 p.m., Eastern Daylight Time (EDT), on Monday, August 1, 2016, and be addressed to *ken.sandler@gsa.gov.*

Dated: July 15, 2016.

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy.

[FR Doc. 2016–17145 Filed 7–19–16; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: 45 CFR 303.7—Provision of Services in Intergovernmental IV–D; Federally Approved Forms.

OMB No.: 0970–0085.

Description: The Intergovernmental forms were initially approved by OMB in 1988; 45 CFR 303.7 requires child support programs to use the OMB federally-approved forms in intergovernmental IV–D cases unless a country has provided alternative forms as a part of its chapter in a Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries. Additionally, Public Law (Pub. L.) 113–183, the *Preventing Sex Trafficking and Strengthening Families Act* of 2014 amended the Social Security Act to require U.S. states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands to enact any amendments to UIFSA "officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws" (UIFSA 2008). Section 311(b) of UIFSA 2008 requires the States and jurisdictions to use forms mandated by Federal law.

The current intergovernmental forms will expire in February 2017. The revised forms included in this submission to OMB incorporate many of the revisions requested by commenters during the 60-day comment period, which started August 4, 2015 (**Federal Register**, Volume 80, Number 149, page 46286).

Respondents: State, local, or Tribal agencies administering a child support enforcement program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Transmittal #1—Initial Request	54	19,440	0.17	178,459
Transmittal #1—Initial Request Acknowledgement *	54	19,440	0.05	52,488
Transmittal #2—Subsequent Action	54	14,580	0.08	62,986
Transmittal #3—Request for Assistance/Discovery	54	2,700	0.08	11,664
Uniform Support Petition	54	6,480	0.05	17,496
General Testimony	54	6,480	0.33	115,474
Declaration in Support of Establishing Parentage	54	2,700	0.15	21,870
Locate Data Sheet	54	388	0.05	1,048
Notice of Determination of Controlling Order	54	54	0.25	729
Letter of Transmittal Requesting Registration	54	14,310	0.08	61,819
Personal Information Form For UIFSA § 311 *	54	27,000	0.05	72,900
Child Support Agency Confidential Information Form *	54	37,584	0.05	101,477
Request for Change of Support Payment Location Pursuant to UIFSA 319(b) *	54	27,000	0.05	72,900

Estimated Total Annual Burden Hours: 771,309.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–17086 Filed 7–19–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank: Change in User Fees

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration, Department of Health and Human Services, is announcing a decrease in user fees charged to individuals and entities authorized to request information from the National Practitioner Data Bank (NPDB). The new fee will be $2.00 for both continuous and one-time queries and $4.00 for self-queries. The reduction in NPDB user fees is intended to encourage new users while ensuring sufficient funds to the full cost of NPDB operations and retain appropriate cash reserves. The goals of the cash reserves are to mitigate risks, cover operational costs should revenue decrease, and cover the cost of reasonable enhancement and maintenance of the NPDB management system.

HRSA has the standard operating procedure of reviewing NPDB user fees every 2 years. The biennial review of NPDB user fees offers HRSA the opportunity to evaluate its reserves as well as revenue relative to costs. Further, the review provides essential information on whether the fee rates and authorized activities are aligned with actual program costs and activities, and can help promote greater understanding of the fee by NPDB users.

DATES: This change will be effective October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Director, Division of Practitioner Data Bank, Bureau of Health Workforce, Health Resources and Services Administration, 5600 Fishers Lane, Room 11N37, Rockville, MD 20857; telephone number: (301) 443–2300.

SUPPLEMENTARY INFORMATION: The current fee structure ($3.00/continuous query enrollment, $3.00/one-time query, and $5.00/self-query) was announced in the **Federal Register** on April 18, 2014 (79 FR 75), and became effective on October 1, 2014. One-time queries, continuous query enrollments, and self-queries are submitted and query responses are received through the NPDB's secure Web site. Fees are paid via electronic funds transfer, debit card, or credit card.

The NPDB is authorized by the Health Care Quality Improvement Act of 1986 (the Act), Title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Further, two additional statutes expanded the scope of the NPDB—Section 1921 of the Social Security Act, as amended (42 U.S.C. 1396r–2) and Section 1128E of the Social Security Act, as amended (42 U.S.C. 1320a–7e). Information collected under the Section 1128E authority was consolidated within the NPDB pursuant to Section 6403 of the Affordable Care Act, Public Law 111–148; this consolidation became effective on May 6, 2013.

42 U.S.C. 11137(b)(4), 42 U.S.C. 1396r–2(e), and 42 U.S.C. 1320a–7e(d) authorize the establishment of fees for the costs of processing requests for disclosure of such information. Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the NPDB. In determining any changes in the amount of user fees, the Department uses the criteria set forth in section 60.19(b) of the regulations. Section 60.19(b) states:

> "The amount of each fee will be determined based on the following criteria:
>
> (1) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement,
>
> (2) Physical overhead, consulting, and other indirect costs (including materials and supplies, utilities, insurance, travel, and rent and depreciation on land, buildings, and equipment),
>
> (3) Agency management and supervisory costs,
>
> (4) Costs of enforcement, research, and establishment of regulations and guidance,
>
> (5) Use of electronic data processing equipment to collect and maintain information—the actual cost of the service, including computer search time, runs and printouts, and
>
> (6) Any other direct or indirect costs related to the provision of services."

The Department will continue to review the user fees periodically as required by Office of Management and Budget Circular Number A–25 and will revise fees as necessary. Any future changes in user fees and their effective dates will be announced in the **Federal Register**.

Dated: July 14, 2016.

James Macrae,

Acting Administrator.

[FR Doc. 2016–17117 Filed 7–19–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice for Request for Nominations

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill vacancies on the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD). ACTPCMD is authorized by Section 749 of the Public Health Service (PHS) Act (42 U.S.C. 293l), as amended. The Advisory Committee is governed by provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), as amended, which sets forth standards for the formation and use of advisory committees, and applies to the extent that the provisions of FACA do not conflict with the requirements of PHS Act Section 749.

DATES: The agency will receive nominations on a continuous basis.

ADDRESSES: All nominations should be submitted to Advisory Council Operations, Bureau of Health Workforce, HRSA, 11W45C, 5600 Fishers Lane, Rockville, Maryland 20857. Mail delivery should be addressed to Advisory Council Operations, Bureau of Health Workforce, HRSA, at the above address, or via email to: *BHWAdvisoryCouncilFRN@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Joan Weiss, Ph.D., RN, CRNP, FAAN, Designated Federal Official, ACTPCMD at 301–443–0430 or email at *jweiss@hrsa.gov.* A copy of the current committee membership, charter, and reports can be obtained by accessing the Web site *http://www.hrsa.gov/advisorycommittees/bhpradvisory/actpcmd/.*

SUPPLEMENTARY INFORMATION: ACTPCMD provides advice and recommendations to the Secretary of the U.S. Department of Health and Human Services (Secretary) and ranking members of the U.S. Senate Committee on Health, Education, Labor and Pensions, and the U.S. House of Representatives Committee on Energy and Commerce on matters concerning policy, program development, and other matters of significance concerning the activities under Sections 747 and 748, Part C of Title VII of the PHS Act, as amended. Meetings are held twice a year.

Specifically, HRSA is requesting nominations for voting members of ACTPCMD representing: Family medicine, general internal medicine, general pediatrics, physician assistant, general dentistry, pediatric dentistry, public health dentistry, and dental hygiene programs. Among these nominations, residents and/or fellows from these programs are encouraged to apply. In making such appointments, the Secretary will ensure a fair balance between the health professions, a broad geographic of representation of members, and a balance between urban and rural members. Members will be appointed based on their competence, interest, and knowledge of the mission of the profession involved. The Secretary will also ensure the adequate representation of women and minorities.

The Department of Health and Human Services (HHS) will consider nominations of all qualified individuals with the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership. Nominations shall state that the nominee is willing to serve as a member of ACTPCMD and appears to have no conflict of interest that would preclude ACTPCMD membership. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of ACTPCMD to permit evaluation of possible sources of conflicts of interest.

A nomination package should include the following information for each nominee:

(1) A letter of nomination from an employer, a colleague, or a professional organization stating the name, affiliation, and contact information for

the nominee, the basis for the nomination (*i.e.*, what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of ACTPCMD, and the nominee's field(s) of expertise);

(2) A letter of self-interest stating the reasons the nominee would like to serve on ACTPCMD;

(3) A biographical sketch of the nominee and a copy of his/her curriculum vitae; and

(4) The name, address, daytime telephone number, and email address at which the nominator can be contacted.

Nominations will be considered as vacancies occur on ACTPCMD. Nominations should be updated and resubmitted every 3 years to continue to be considered for committee vacancies.

HHS strives to ensure that the membership of HHS federal advisory committees is balanced in terms of points of view represented and the committee's function. The Department encourages nominations of qualified candidates from all groups and locations. Appointment to ACTPCMD shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–17109 Filed 7–19–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Prospective Grant of Exclusive Ownership of the Know The Facts First Campaign

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office on Women's Health.

ACTION: Notice.

SUMMARY: Pursuant to 42 U.S.C. 300u and 42 U.S.C. 237a (§ 3509 of the Patient Protection and Affordable Care Act), notice is given that the Office on Women's Health (OWH) is soliciting proposals from entities and organizations for the opportunity to sustain the implementation of the *Know The Facts First* public health awareness and education campaign.

DATES: Representatives of eligible organizations should submit expressions of interest no later than 6:00 p.m. EST on August 19, 2016.

ADDRESSES: Expressions of interest should be directed electronically to *Womenshealth@hhs.gov* or mailed to the Office on Women's Health, Office of the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Avenue SW., Room 732F.10, Washington, DC 20201. Attention Jill Wasserman.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Jill Wasserman, program lead for *Know The Facts First,* Office on Women's Health, 200 Independence Avenue SW, Room 732F.10, Washington, DC 20201. Email: *Womenshealth@hhs.gov.*

SUPPLEMENTARY INFORMATION: OWH launched the *Know The Facts First* campaign in December 2015 with the goal of providing teen girls (ages 13–19) with accurate information about sexually transmitted diseases (STDs) and STD prevention so that they can make informed decisions about sexual activity. After a year of implementation, OWH will bring its support of the campaign to a close in early 2017. OWH is looking for one organization that is interested in continuing the implementation of *Know The Facts First* by promoting campaign messages to teens nationally. Below are preferred qualifications that OWH is looking for in an organization to sustain the campaign:

- National reach;
- established presence with youth, especially teenagers;
- experience in communicating sensitive issues;
- mission or activities related to improving health among the public, especially among teens;
- ability to reach teens with campaign messages, especially those at high-risk for STDs;
- presence on digital platforms to support message dissemination to teens and their influencers;
- experience in managing Web sites;
- ability to host, maintain, and update the existing *Know The Facts First* microsite (*http://girlshealth.gov/knowthefactsfirst*) as a .org or .com Web site;
- experience in working with partners to disseminate messages;
- access to subject matter experts in sexual health and teens; and
- experience leading public awareness and education campaigns.

Expressions of interest should outline eligibility in response to the qualifications bulleted above and be no more than two pages in length.

Dated: July 13, 2016.

Nancy C. Lee,

Deputy Assistant Secretary for Health—Women's Health, Director, Office on Women's Health.

[FR Doc. 2016–17111 Filed 7–19–16; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0937–0025–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0937–0025, scheduled to expire on November 30, 2016. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before July 8, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0937–0025.

Information Collection Request Title: The Commissioned Corps of the U.S. Public Health Service Application.

Abstract: The principal purpose for collecting the information is to permit HHS to determine eligibility for appointment of applicants into the Commissioned Corps of the U.S. Public Health Service (Corps). The Corps is one of the seven Uniformed Services of the United States (37 U.S.C. 101(3)), and appointments in the Corps are made pursuant to 42 U.S.C. 204 *et seq.* and 42

CFR 21.58. The application consists of forms PHS–50, PHS–1813, and the Commissioned Corps Personal Statement.

Likely Respondents: Candidates/Applicants to the Commissioned Corps.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Prequalification Questionnaire	6,000	1	15/60	1,500
PHS–50	1,000	1	1.0	1,000
Form PHS–1813	4,000	1	15/60	1,000
Addendum: Commissioned Corps Personal Statement	1,000	1	45/60	750
Total				4,250

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–17108 Filed 7–19–16; 8:45 am]

BILLING CODE 4150–49–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: August 12, 2016.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jean G. Noronha, Ph.D., Director, DEA, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367, *jnoronha@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: July 13, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17078 Filed 7–19–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[167 A2100DD/AAKC001030/A0A501010.999900]

Tribal Consultation and Listening Sessions on Indian Trust Asset Reform Act

AGENCIES: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Interior) is hosting a listening session and tribal consultation sessions with Indian Tribes, appropriate Indian organizations, and individual Indians on the implementation of Title III of the Indian Trust Asset Reform Act recently passed by Congress. Topics to be addressed in these sessions include the establishment of an Under Secretary for Indian Affairs, the transition of certain functions of the Office of the Special Trustee for American Indians (OST) to other entities within Interior, the identification of options for a single entity to conduct appraisals and valuations of Indian trust property, and draft minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property.

DATES: Please see the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the listening sessions and tribal/individual Indian consultation sessions. Written comments are due by September 30, 2016.

ADDRESSES: Please submit written comments by email to *OST_ITARA@ost.doi.gov.* If you do not have access to email, please send a hard copy to the following address, but please do not send a duplicate hard copy if you have emailed a copy: Ms. Elizabeth Appel, Office of the Assistant Secretary—Indian Affairs, 1849 C Street NW., MS 3642, Washington, DC 20240. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for locations of the listening sessions and Tribal/individual Indian consultation sessions.

FOR FURTHER INFORMATION CONTACT: Ms. Debra DuMontier, Office of the Special Trustee for American Indians at *debra_dumontier@ost.doi.gov* or (505) 816–1131 or Ms. Elizabeth Appel, Office of the Assistant Secretary—Indian Affairs at *elizabeth.appel@bia.gov* or (202) 273–4680.

SUPPLEMENTARY INFORMATION: On June 22, 2016, President Obama signed into law the Indian Trust Asset Reform Act, Public Law 114–178. Title III of this Act:

- Allows the Secretary of the Interior to establish an Under Secretary for Indian Affairs who is to report directly to the Secretary of the Interior and coordinate with OST to ensure an orderly transition of OST functions to an agency or bureau within Interior;
- Requires Interior to prepare a transition plan and timetable for how identified OST functions might be moved to other entities within the Department of the Interior;
- Requires appraisals and valuations of Indian trust property to be administered by a single administrative entity within Interior; and
- Requires Interior to establish minimum qualifications for individuals to prepare appraisals and valuations of Indian trust property and allows an appraisal or valuation that meets those

minimum qualifications to be considered final without being reviewed or approved by Interior under certain conditions.

The Department is hosting listening sessions and consultation sessions with Indian tribes and individual Indians on each of the topics identified above on the following dates and in certain locations. More specific information on the location identifying the venue will be posted as soon as it becomes available at *www.doi.gov/OST/ITARA*.

Date	Time (All times local)	Listening sessions/ Tribal consultation sessions	Location
Wednesday 8/17/2016	1:00 p.m.–4:00 p.m.	Listening Session (in conjunction with the Indian Land Working Group 2016 Symposium).	Oneida Tribe of Indians of Wisconsin, Radisson Hotel and Conference Center, Airport Drive, Green Bay, WI 54313.
Monday 8/22/2016	8:30 a.m.–12:30 p.m.	Tribal Consultation	U.S. Forest Service, 4000 Masthead St. NE., Albuquerque, NM 87109.
Friday, 8/26/2016	8:30 a.m.–12:30 p.m.	Tribal Consultation	Minneapolis, MN.
Monday 8/29/2016	8:30 a.m.–12:30 p.m.	Tribal Consultation	Henry M. Jackson Federal Building, 915 2nd Avenue, Seattle, WA 98104.
Wednesday 8/31/2016	8:30 a.m.–12:30 p.m.	Tribal Consultation	Billings, MT.
Wednesday 9/7/2016	8:30 a.m.–12:30 p.m.	Tribal Consultation	Tulsa, OK.
Friday 9/9/2016	8:30 a.m.–12:30 p.m.	Tribal Consultation	Sioux Falls, SD.
Monday 9/12/2016	8:30 a.m.–12:30 p.m.	Tribal Consultation	Palm Springs, CA.
Monday 9/19/2016	1:30 p.m.–3:30 p.m.	Tribal Consultation, Teleconference.	(888) 282–0365, passcode: 9342929.

Additional information, including possible OST functions that may be transferrable to other entities within the Department and potential options for a single entity within the Department that might perform appraisal and valuation services for Indian trust property, is also available at the Web site listed above (*www.doi.gov/OST/ITARA*).

Dated: July 13, 2016.

Michael L. Connor,

Deputy Secretary.

[FR Doc. 2016–17166 Filed 7–19–16; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–534–537 and 731–TA–1274–1278 (Final)]

Certain Corrosion-Resistant Steel Products From China, India, Italy, Korea, and Taiwan; Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that an industry in the United States is materially injured by reason of imports of certain corrosion-resistant steel products from China, India, Italy, Korea, and Taiwan, provided for in subheadings 7210.30.00, 7210.41.00, 7210.49.00, 7210.61.00, 7210.69.00, 7210.70.60, 7210.90.10, 7210.90.60, 7210.90.90, 7212.20.00, 7212.30.10, 7212.30.30, 7212.30.50, 7212.40.10, 7212.40.50, 7212.50.00, 7212.60.00, 7215.90.10, 7215.90.30, 7215.90.50, 7217.20.15, 7217.30.15, 7217.90.10, 7217.90.50, 7225.91.00, 7225.92.00, 7226.99.01, 7228.60.60, 7228.60.80, and 7229.90.10 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV"), and that have been found by Commerce to be subsidized by the governments of China, India, Italy, and Korea.[2]

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations effective June 3, 2015, following receipt of petitions filed with the Commission and Commerce by United States Steel Corp. (Pittsburgh, Pennsylvania), Nucor Corp. (Charlotte, North Carolina), Steel Dynamics Inc. (Fort Wayne, Indiana), California Steel Industries (Fontana, California), ArcelorMittal USA LLC (Chicago, Illinois), and AK Steel Corp. (West Chester, Ohio). The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain corrosion-resistant steel products from China, India, Italy, and Korea were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and imports of certain corrosion-resistant steel products from China, India, Italy, Korea, and Taiwan were dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 12, 2016 (81 FR 7585), as revised on May 9, 2016 (81 FR 28104). The hearing was held in Washington, DC, on May 26, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on July 15, 2016. The views of the Commission are contained in USITC Publication 4620 (July 2016), entitled *Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan: Investigation Nos. 701–TA–534–537 and 731–TA–1274–1278 (Final).*

By order of the Commission.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] All six Commissioners voted in the affirmative. The Commission also finds that imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the countervailing duty orders on certain corrosion-resistant steel products from China, Italy, and Korea and the antidumping duty orders on certain corrosion-resistant steel products from China, Italy, Korea, and Taiwan.

Dated: July 15, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–17131 Filed 7–19–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0048]

Agency Information Collection Activities; Proposed Collection, Comments Requested; Extension of a Currently Approved Collection: Cargo Theft Incident Report

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the established review procedures of the Paperwork Reduction Act of 1995.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until September 19, 2016.

FOR FURTHER INFORMATION CONTACT: All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Samuel Berhanu, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Cargo Theft Incident Report

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number: 1110–0048

Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: City, county, state, federal, and tribal law enforcement agencies.

Abstract: This collection is needed to collect information on cargo theft incidents committed throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,439 law enforcement agency respondents that submit monthly for a total of 221,268 responses with an estimated response time of 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 18,439 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: July 15, 2016.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2016–17151 Filed 7–19–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amended Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On July 13, 2016, the Department of Justice lodged a proposed Third Amended Consent Decree with the United States District Court for the Western District of Washington in the lawsuit entitled *United States* v. *Point Ruston LLC,* Civil Action No. C91–5528 B.

This amended Consent Decree resolves disputes with Point Ruston LLC, and amends work and payment schedules established in the Second Amendment to the Asarco Tacoma Smelter Consent Decree, which the Court entered on October 23, 2006. The Consent Decree involves the Asarco Tacoma Smelter and Sediments/Groundwater Operable Units of the Commencement Bay Nearshore/Tideflats Superfund Site. Under the terms of this amendment, among other agreements: (1) New deadlines are set for the completion of the remedial action at the Site; (2) a payment schedule is established to address unpaid past oversight costs and other monies due; and (3) a process is established that allows Point Ruston to seek relief from the remedial action work schedule should it be prepared to commercially develop certain portions of the Site.

The publication of this notice opens a period for public comment on the Third Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v Point Ruston LLC,* Civil Action No. C91–5528 B, D.J. Ref. No. 90–11–2–698/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Third Amended Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-*

decrees. We will provide a paper copy of the Third Amended Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $71.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $19.50.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–17087 Filed 7–19–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 12:00 p.m., Wednesday, July 27, 2016.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on six original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: July 18, 2016.

J. Patricia W. Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2016–17263 Filed 7–18–16; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., July 27, 2016.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of May 11, 2016 minutes.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: July 15, 2016.

J. Patricia W. Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2016–17262 Filed 7–18–16; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Claim for Reimbursement-Assisted Reemployment

AGENCY: Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, "Claim for Reimbursement-Assisted Reemployment," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 19, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201602-1240-007* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Claim for Reimbursement-Assisted Reemployment information collection. The Federal Employees' Compensation Act (FECA), in relevant part, provides vocational rehabilitation services to eligible injured Federal employees to facilitate their return to work. *See* 5 U.S.C 8104(a). The cost of providing these vocational rehabilitation services is paid from the Federal Employees' Compensation Fund, and annual appropriations language provides the OWCP with legal authority to use amounts from the Fund to reimburse private sector employers for a portion of the salary of reemployed disabled Federal workers hired through the OWCP Assisted Reemployment Program. Employers submit Form CA–2231 to claim reimbursement for wages paid under the Assisted Reemployment Program. This information collection has been classified as a revision, because of an enhanced certification statement, the addition of a line for the supervisor's printed name, and enhanced Privacy Act and reasonable accommodations statements. FECA sections 8121 and 8149 authorize this information collection. *See* 5 U.S.C. 8121 and 8149.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0018. The current approval is scheduled to expire on July 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 23, 2016 (81 FR 15572).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0018. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Claim for Reimbursement-Assisted Reemployment.

OMB Control Number: 1240–0018.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 32.

Total Estimated Number of Responses: 128.

Total Estimated Annual Time Burden: 64 hours.

Total Estimated Annual Other Costs Burden: $67.

Dated: July 14, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–17113 Filed 7–19–16; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Emergency Mine Evacuation

AGENCY: Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Emergency Mine Evacuation,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 19, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201512-1219-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Emergency Mine Evacuation information collection requirements contained in regulations 30 CFR parts 48 and 75 to improve emergency evacuation and rescue in underground coal mines. These regulations include requirements for immediate accident notification applicable to all mines. In addition, the regulations contain reporting and record keeping requirements for training, including evacuation drills; self-contained self-rescuer storage, training, and use; and installation and maintenance of lifelines in underground coal mines. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a) and 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0141.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on August 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 29, 2016 (81 FR 17498).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0141. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–DOL–MSHA.

Title of Collection: Emergency Mine Evacuation.

OMB Control Number: 1219–0141.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 240.

Total Estimated Number of Responses: 1,150,400.

Total Estimated Annual Time Burden: 479,282 hours.

Total Estimated Annual Other Costs Burden: $52,960.

Dated: July 14, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–17112 Filed 7–19–16; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Tuesday, July 26, 2016 from 5:30—6:30 p.m. EDT.

SUBJECT MATTER: (1) Committee Chair's Opening Remarks; (2) Discussion of Committee Interests & Goals; (3) Strategic Plan Overview and Process.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public audio stream will be available. The link is: *http://event.on24.com/r.htm?e=1225682&s=1&k=.*

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp.* Point of contact for this meeting is: Kathy Jacquart, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Chris Blair,

Executive Assistant to the NSB Office.

[FR Doc. 2016–17273 Filed 7–18–16; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 19, 2016. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant*—Permit Application: 2017–009
Glenn McClure, 1 College Circle, Geneseo, NY 14454

Activity for Which Permit Is Requested

ASPA entry. The applicant is an artist supported by the National Science Foundation's Antarctic Artists & Writers Program. The applicant would like to visit Cape Royds, ASPA 121, to make audio recordings of Adelie penguins that will be incorporated into musical compositions as a means to share the Antarctic natural world with the general public.

Location

ASPA 121, Cape Royds, Ross Island.

Dates

October 19–November 20, 2016.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–17082 Filed 7–19–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting; August 24, 2016—DOE Work on Integrating Different Canister Designs for Storage and Disposal of SNF

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, and in accordance with its mandate to review the technical and scientific validity of U.S. Department of Energy (DOE) activities related to implementing the Nuclear Waste Policy Act of 1982, the U.S. Nuclear Waste Technical Review Board will meet in Washington, DC on August 24, 2016, to review DOE activities related to integrating the management and disposal of the many different designs of canisters for spent nuclear fuel (SNF) and high-level radioactive waste (HLW) that are currently in service and under development.

The meeting will be held at the Westin Washington, DC City Center Hotel, 1400 M Street NW., Washington, DC 20005, 202–429–1700. A block of rooms has been reserved for meeting attendees at a rate of $149.00 per night.

Reservations may be made by phone: (888) 627–9035 or online: *https://www.starwoodmeeting.com/events/start.action?id=1512302524&key=12331FD9. Reservations must be made by Monday, August 1, 2016, to ensure receiving the meeting rate.* On-site parking at the hotel is available for an overnight rate of $59 or a daily rate of $28.00.

The meeting will begin at 8:00 a.m. on Wednesday, August 24, 2016, and is scheduled to adjourn at 5:00 p.m. Among the topics to be discussed at the meeting are descriptions of the canister types currently used and being developed for storing and transporting SNF and HLW, DOE's efforts to create an integrated program for managing and disposing of SNF and HLW canisters, and nuclear industry perspectives on DOE's efforts to develop standardized canisters for commercial SNF. The meeting agenda will be available on the Board's Web site: *www.nwtrb.gov* approximately one week before the meeting. The agenda may also be requested by email or telephone at that time from Davonya Barnes of the Board's staff.

The meeting will be open to the public, and opportunities for public comment will be provided before the lunch break and at the end of the day. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. Depending on the number of people who sign up to speak, it may be necessary to set a time limit on individual remarks. However, written comments of any length may be submitted, and all comments received in writing will be included in the record of the meeting, which will be posted on the Board's Web site after the meeting. The meeting will be webcast at: *https://www.webcaster4.com/Webcast/Page/909/15610,* and an archived version of the webcast will be available on the Board's Web site following the meeting. The transcript of the meeting will be available on the Board's Web site no later than September 9, 2016.

The Board was established in the NWPAA as an independent federal agency in the Executive Branch to evaluate the technical and scientific validity of DOE activities related to management and disposal of SNF and HLW and to provide objective expert advice to Congress and the Secretary of Energy on these issues. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences.

The Board reports its findings, conclusions, and recommendations to Congress and the Secretary of Energy. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's Web site. For information on the meeting agenda, contact Daniel Ogg: *ogg@nwtrb.gov* or Karyn Severson: *severson@nwtrb.gov.* For information on lodging or logistics, contact Eva Moore: *moore@nwtrb.gov.* To request copies of the meeting agenda or the transcript, contact Davonya Barnes: *barnes@nwtrb.gov.* All four can be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: July 15, 2016.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2016–17153 Filed 7–19–16; 8:45 am]

BILLING CODE 6820–AM–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–243; CP2016–244; CP2016–245; MC2016–168 and R2016–6]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 21, 2016 (applies to Docket Nos. CP2016–243, CP2016–244, and CP2016–245); and July 25, 2016 (applies to Docket Nos. MC2016–168 and R2016–6).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–243; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* July 13, 2016; *Filing Authority:* 39 CFR 3015.5 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* July 21, 2016.

2. *Docket No(s).:* CP2016–244; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:*

July 13, 2016; *Filing Authority:* 39 CFR 3015.5 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* July 21, 2016.

3. *Docket No(s).:* CP2016–245; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* July 13, 2016; *Filing Authority:* 39 CFR 3015.5 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* July 21, 2016.

4. *Docket No(s).:* MC2016–168 and R2016–6; *Filing Title:* Request of United States Postal Service to Add Inbound Market Dominant Registered Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment; *Filing Acceptance Date:* July 13, 2016; *Filing Authority:* 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR 3010.40 *et seq.*, and 39 CFR 3020.30 *et seq.; Public Representative:* Jennaca D. Upperman; *Comments Due:* July 25, 2016.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–17085 Filed 7–19–16; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Employee Annuity Under the Railroad Retirement Ac; OMB 3220–0002.

Section 2a of the Railroad Retirement Act (RRA) provides for payments of age and service, disability, and supplemental annuities to qualified employees. An annuity cannot be paid until the employee stops working for a railroad employer. In addition, the age and service employee must relinquish any rights held to such jobs. A disabled employee does not need to relinquish employee rights until attaining Full Retirement Age, or if earlier, when their spouse is awarded a spouse annuity. Benefits become payable after the employee meets certain other requirements, which depend on the type of annuity payable. The requirements for obtaining the annuities are prescribed in 20 CFR 216 and 220.

To collect the information needed to help determine an applicant's entitlement to, and the amount of, an employee retirement annuity the RRB uses Forms AA–1, *Application for Employee Annuity;* AA–1d, *Application for Determination of Employee Disability;* G–204, *Verification of Workers Compensation/Public Disability Benefit Information,* and electronic Forms AA–1cert, *Application Summary and Certification,* and AA–1sum, *Application Summary.*

The AA–1 application process obtains information from an applicant about their marital history, work history, military service, benefits from other governmental agencies, railroad pensions and Medicare entitlement for either an age and service or disability annuity. An RRB representative interviews the applicant either at a field office, an itinerant point, or by telephone. During the interview, the RRB representative enters the information obtained into an on-line information system. Upon completion of the interview, the on-line information system generates Form AA–1cert, *Application Summary and Certification,* or Form AA–1sum, *Application Summary,* a summary of the information that was provided for the applicant to review and approve. Form AA–1cert documents approval using the traditional pen and ink "wet" signature, and Form AA–1sum documents approval using the alternative signature method called Attestation. When the RRB representative is unable to contact the applicant in person or by telephone, for example, the applicant lives in another country, a manual version of Form AA–1 is used.

Form AA–1d, *Application for Determination of Employee's Disability,* is completed by an employee who is filing for a disability annuity under the RRA, or a disability freeze under the Social Security Act, for early Medicare based on a disability. Form G–204, *Verification of Worker's Compensation/Public Disability Benefit Information,* is used to obtain and verify information concerning a worker's compensation or a public disability benefit that is or will be paid by a public agency to a disabled railroad employee.

The RRB recently received short-term approval of a Request for Emergency Clearance from the Office of Management and Budget for this information collection. In response to that request the RRB received comments from 3 railroad labor organizations commenting on the RRB's action. The comments centered on the collection of information associated with the following issues:

- The relinquishment of seniority rights;
- The reporting of volunteer and social/recreational activities as part of the adjudication of an application for disability;
- Whether an applicant had filed or expected to file a lawsuit or claim against a person or company for a personal injury that resulted in the payment of sickness benefits by the RRB; and
- The use of facilitators who assist disability applicants in the completion of their applications.

RRB staff thoroughly evaluated the comments received and responded to the railroad labor organizations. In response to those comments, the RRB proposes the following changes to Forms AA–1 and AA–1d:

- deletion of Item 35a–d from Form AA–1, regarding the relinquishment of seniority rights;
- the relocation of current Items 52–53 from Form AA–1d to proposed Items 48a–b on Form AA–1, regarding whether an applicant had filed or expected to file a lawsuit or claim against a person or company for a personal injury that resulted in the payment of sickness benefits by the RRB, as the potential for uncollected sickness benefits can apply to both a disability applicant as well as an applicant qualified for an age and service annuity.

Comparable revisions to electronic equivalent forms (AA–1cert and AA–1sum) are also being proposed. The RRB proposes no changes to Form G–204.

One response is requested of each respondent. Completion of the forms is required to obtain/retain a benefit.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–1 (without assistance)	100	62	103
AA–1cert (with assistance)	4,620	30	2,310
AA–1sum (with assistance)	8,000	29	3,867
AA–1d (with assistance)	2,600	60	2,600
AA–1d (without assistance)	5	85	7
G–204	20	15	5
Total	15,345	....	8,892

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2016–17249 Filed 7–19–16; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78326; File No. SR–NYSE–2016–37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Removing From Its Rules Certain Internal Procedures Regarding the Use of Fine Income

July 14, 2016.

I. Introduction

On May 13, 2016, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (“Act”),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to remove internal procedures regarding the use of fine income, as described below. The proposed rule change was published for comment in the **Federal Register** on May 31, 2016.[4] The Commission received one comment letter on the proposed rule change [5] and a response to the comment letter from the Exchange.[6] This order approves the proposed rule change.

II. Description of the Proposal

NYSE proposes to remove as Exchange rules internal procedures regarding the use of fine income, which were approved by the Commission in 2007 (“Fine Income Procedures” or “Procedures”) [7] in connection with the 2006 merger between New York Stock Exchange, Inc. and Archipelago Holdings, Inc. (“Archipelago Merger”).[8] The Exchange explains that, at that time, it had delegated certain of its regulatory functions to its then subsidiary, NYSE Regulation, Inc. (“NYSE Regulation”) [9] pursuant to a delegation agreement (“Delegation Agreement”).[10] As a result, as originally approved, the Fine Income Procedures referred to actions to be taken by NYSE Regulation and NYSE Regulation’s board of directors (“NYSE Regulation Board”). However, following termination of the Delegation Agreement, the Regulatory Oversight Committee (“ROC”) of the Exchange’s board of directors (“Board”) assumed responsibility for providing independent oversight of the regulatory function of the Exchange.[11] The Exchange explains that, in addition to the restrictions in the Fine Income Procedures, Section 4.05 of the Exchange’s Operating Agreement (“Section 4.05”) contains limitations on the use of regulatory assets and income, including fine income.[12] Specifically, Section 4.05 prohibits the Exchange from: (i) Using any regulatory assets or any regulatory fees, fines or penalties collected by its regulatory staff for commercial purposes; or (ii) distributing such assets, fees, fines or penalties to NYSE Group, Inc. (“NYSE Group”), *i.e.,* the member of New York Stock Exchange LLC, or any other entity.[13]

The Exchange proposes to delete the Fine Income Procedures, noting that the Exchange would continue to remain subject to the restrictions of Section 4.05, which, coupled with the Operating Agreement provisions governing the ROC,[14] the Exchange believes are sufficient to address concerns about its power to fine member organizations and the proper use of such funds.[15] The

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 77899 (May 24, 2016), 81 FR 34393 (“Notice”).

[5] *See* letter from Michael Walsh, Attorney, received by the Commission on June 7, 2016 (“Walsh Letter”).

[6] *See* letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated June 16, 2016 (“NYSE Response Letter”).

[7] *See* Securities Exchange Act Release No. 55216 (January 31, 2007), 72 FR 5779 (February 7, 2007) (“Order Approving the Fine Income Procedures”).

[8] The Exchange states that the Archipelago Merger had the effect of “demutualizing” New York Stock Exchange, Inc. by separating equity ownership from trading privileges, and converting it to a for-profit entity. *See* Notice, *supra* note 4, at 34394 n.5 (citing Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251, 11254 (March 6, 2006) (“Merger Approval Order”)).

[9] *See* Notice, *supra* note 4, at 34394. The Exchange states that, as approved, the Fine Income Procedures provide that fines would play no role in the annual NYSE Regulation budget process and that the use of fine income by NYSE Regulation would be subject to specific review and approval by the NYSE Regulation Board. *See id.; see also* Securities Exchange Act Release No. 55003 (December 22, 2006), 71 FR 78497, 78498 (December 29, 2006) (“Fine Income Procedures Proposing Release”). The Exchange notes that, in approving the Fine Income Procedures, the Commission expressed that the Fine Income Procedures would “guard against the possibility that fines may be assessed to respond to budgetary needs rather than to serve a disciplinary purpose.” *See* Order Approving the Fine Income Procedures, *supra* note 7, at 5780.

[10] The Delegation Agreement terminated as of February 16, 2016. *See* Notice, *supra* note 4, at 34394; *see also* Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837, 59839 (October 2, 2015) (“NYSE Approval Order”).

[11] *See* Notice, *supra* note 4, at 34394.

[12] *See id.; see also* Ninth Amended and Restated Operating Agreement of New York Stock Exchange LLC (“Operating Agreement”), Art. IV, Sec. 4.05; NYSE Approval Order, *supra* note 10, at 59839.

[13] *See* Operating Agreement, Art. IV, Sec. 4.05; *see also* NYSE Approval Order, *supra* note 10, at 59839.

[14] The Exchange explains that “the ROC is specifically charged with reviewing the regulatory budget of the Exchange and inquiring into the adequacy of resources available in the budget for regulatory activities.” *See* Notice, *supra* note 4, at 34395 (citing Operating Agreement, Art. II, Sec. 2.03(h)(ii)).

[15] *See* Notice, *supra* note 4, at 34395.

Exchange also believes that limitations on the use of such funds are not the most effective way to assure the proper exercise by Exchange regulatory staff of the Exchange's power to fine member organizations; in fact, the Exchange states that "usage limitations on fine income do not provide oversight of regulatory performance." [16] Rather, the Exchange believes that the responsibility to assure proper exercise by its regulatory staff of the Exchange's power to fine member organizations more properly lies with the ROC, which is responsible for overseeing the Exchange's regulatory and self-regulatory organization responsibilities and assessing its regulatory performance.[17]

Moreover, the Exchange believes that its disciplinary procedures, and specifically the appellate process contained therein, serve as "a powerful check on the improper exercise by Exchange regulatory staff of the power to fine members and member organizations."[18] The Exchange notes that in the event of an adverse hearing panel determination, members first have the opportunity to appeal the decision to a Board committee comprised of independent directors and individuals associated with member organizations of the Exchange ("Committee for Review" or "CFR"), which recommends a disposition to the Board, and then can appeal the decision to the Commission, whose decision in turn can be challenged in federal court.[19]

In support of its position that the protections in Section 4.05 are sufficient to ensure the proper use by the Exchange of fine income, the Exchange states that Section 4.05 is in fact "wider in scope than the Fine Income Procedures," explaining that "because Section 4.05 encompasses all regulatory assets and income, not just fines, it ensures the proper use by the Exchange of a broader range of regulatory funds, by prohibiting their use for commercial purposes or distributions." [20] The Exchange adds that Section 4.05 also guards against the possibility that other regulatory income, such as examination, access, registration, qualification, arbitration, dispute resolution and regulatory fees, or regulatory assets could be used or assessed to respond to the Exchange's budgetary needs.[21]

The Exchange also believes that the circumstances that led to the creation of the Fine Income Procedures no longer exist.[22] The Exchange states that when the Fine Income Procedures were adopted, a predecessor to Section 4.05 was in effect that directly bound the Exchange but not the entity—NYSE Regulation—actually performing the Exchange's regulatory functions at the time.[23] Following NYSE's reintegration of its regulatory functions and the corresponding termination of the Delegation Agreement, the Exchange itself is the entity that fines member organizations and is directly subject to the limits of Section 4.05.[24] Accordingly, the Exchange believes that removing the Fine Income Procedures and relying on Section 4.05, as well as the provisions governing the ROC,[25] would provide adequate protections against the use of regulatory assets, or assessment of regulatory income, to respond to budgetary needs.[26]

Furthermore, NYSE explains that the proposed change would have the benefit of bringing the Exchange's restrictions on the use of regulatory assets and income into greater conformity with those of its affiliates, NYSE MKT LLC and NYSE Arca, Inc., and would be consistent with limitations on the use of regulatory assets and income of other self-regulatory organizations ("SROs").[27] The Exchange surveyed the rules of other SROs and found that no other SRO limits the use of fine income to extra-budgetary use or subjects the use of fine income to specific review and approval by a regulatory oversight committee or any other body. [28] Rather, the Exchange found that other SROs' limitations on the use of regulatory funds are largely similar to Section 4.05, by generally limiting the use of regulatory funds to the funding of an SRO's legal, regulatory and (in some cases) surveillance operations, and prohibiting the SRO from making a distribution to its member or stockholder, as applicable.[29] In support of its position, the Exchange references the limitations on the use of regulatory funds by NYSE MKT LLC; NYSE Arca, Inc.; BOX Options Exchange LLC; International Securities Exchange, LLC; ISE Gemini, LLC; ISE Mercury, LLC; BATS BZX Exchange, Inc.; BATS BYX Exchange, Inc.; BATS EDGX Exchange, Inc.; EDGA Exchange, Inc.; Miami International Securities Exchange, LLC; National Stock Exchange, Inc.; NASDAQ Stock Market LLC; and Boston Stock Exchange, Inc. (n/k/a NASDAQ BX, Inc.).[30]

As noted above, the Commission received one comment letter on the proposed rule change.[31] The commenter objects to the proposed rule change, citing both substantive and procedural bases.[32] The commenter enumerates the following specific concerns with the proposal: (1) The Exchange's proposal is deficient because it does not include a "redline" of the rule text to allow interested persons to review the proposed changes; [33] (2) the Exchange's argument that the proposed rule change would bring it closer in line with other SROs' rules is objectionable because NYSE, as an industry leader, should be held to a higher standard and "leading the way for other exchanges;" [34] (3) the Exchange, as an SRO, is both a market participant and a regulator, and the Fine Income Procedures "are important because they provide an objectively justifiable arms-length limitation to separate business from regulation;" [35] (4) the Exchange's argument that its disciplinary process, including, in particular, the appellate process, provides safeguards is insufficient and does not provide the same "checks and balances" as the Fine Income Procedures do;[36] (5) the rule of statutory construction that the "specific provision prevails over the general" makes "the Fine Income Procedures superior to Section 4.05;" [37] and (6) the Exchange's argument that the circumstances that led to the Fine Income Procedures no longer exist fails to explain what circumstances changed and what prevents their reoccurrence.[38]

The Exchange submitted a letter responding to the issues raised by the commenter.[39] With respect to the commenter's assertion that the proposal was insufficient because the Exchange's proposal omitted a redline of the rule text, the Exchange explains that the Fine Income Procedures are internal rules that are not included in its published rulebook or governing documents, but the content of the rules are set forth in its proposal.[40]

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[16] *Id.*

[17] *Id.* (citing the Operating Agreement, Art. II, Sec. 2.03(h)(ii)).

[18] *See id.* at 34395.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* The Exchange notes that the Commission, when approving the Archipelago Merger, stated in the approval order that while "NYSE Regulation had the obligation under the Delegation Agreement to assure compliance with the rules of the Exchange, . . . the Fine Income Procedures provided a more direct commitment by NYSE Regulation to ensure the proper exercise of NYSE Regulation's power to fine member organizations and the proper use by NYSE Regulation of fines collected." *Id.* (citing the Merger Approval Order).

[24] *See* Notice, *supra* note 4, at 34394; *see also* NYSE Approval Order, *supra* note 10.

[25] *See* Operating Agreement, Art. II, Sec. 2.03(h)(ii).

[26] *See* Notice, *supra* note 4, at 34395.

[27] *See id.* at 34395–96.

[28] *See id.* at 34396.

[29] *See id.*

[30] *See id.* at 34395–96 nn.18–26 and accompanying text.

[31] *See* Walsh Letter, *supra* note 5.

[32] *See id.* at 1.

[33] *See id.*

[34] *See id.* at 1–2.

[35] *See id.* at 2–4.

[36] *See id.* at 4–5.

[37] *See id.* at 5.

[38] *See id.*

With respect to the commenter's claim that the Exchange should be held to a higher standard than other SROs and should not be permitted to delete the Fine Income Procedures simply because it would bring NYSE closer in line with the limitations of other SROs, the Exchange explains that it cited to other SROs' provisions relating to use of fine income to demonstrate that there are mechanisms other than the Fine Income Procedures that the Commission has found appropriate for ensuring that an SRO uses its regulatory funds properly.[41] The Exchange contends that "[j]ust as the Commission found that the provisions in these other SROs' governing documents were consistent with the Act, the Exchange believes that the Commission should conclude that Section 4.05, as an alternative to the Fine Income Procedures, is consistent with the Act." [42] The Exchange further states that it would be inappropriate to hold NYSE to a higher standard than other SROs (as the commenter has urged) because "[a]s a national securities exchange, the Exchange is subject to the same obligations and requirements under the Act as other national securities exchanges." [43] Moreover, the Exchange maintains that to "hold individual exchanges to different standards based on their size, economic worth, leadership or any of the other factors that the comment letter cites would be contrary to just and equitable principles of trade, would create impediments to a free and open market and national market system, and would impede the protection of investors and the public interest." [44]

Regarding the commenter's statement that the Fine Income Procedures are a means to ensure the separation of the Exchange's business from its regulation, the Exchange states that it does not rely on the Fine Income Procedures to ensure the independence of its self-regulatory responsibilities and regulatory performance from its business interests, and instead notes how its corporate structure, including the required compositions of the Board, ROC, and CFR help to ensure the independence of its regulatory obligations.[45] The Exchange also notes that the Fine Income Procedures are in fact limited in scope and thus the ROC and Section 4.05 in combination are more effective means in providing adequate protections against the use of regulatory assets, or the assessment of regulatory income, to respond to the budgetary needs of the Exchange.[46]

With respect to the commenter's statement that the disciplinary process, and the appellate process in particular, alone does not provide sufficient safeguards against potential conflicts of interest, the Exchange disagrees with the commenter's assertion that the Fine Income Procedures provide a greater check on regulatory misbehavior than the appellate process.[47] The Exchange reiterates its view that the Fine Income Procedures do not provide oversight of regulatory performance and simply monitor how the resulting fine income is spent.[48] In addition, the Exchange describes how its appellate process provides an independent check on the disciplinary process and the possibility of improper exercise by Exchange regulatory staff of the power to fine members and member organizations in light of the CFR's composition, which requires the inclusion of both independent directors as well as representatives of Exchange members.[49]

The Exchange also addresses the commenter's statutory construction argument that deletion of the "more specific provision" (*i.e.,* Fine Income Procedures) could imply that the conduct prohibited by the Fine Income Procedures is no longer prohibited. In response, the Exchange notes that both the Fine Income Procedures and Section 4.05 apply to the use of fine income. The Exchange notes that, if the Fine Income Procedures are deleted, Section 4.05 would still apply to the use of the Exchange's fine income and other regulatory assets.[50]

Finally, the Exchange takes issue with the commenter's assertion that it did not address "what circumstances occurred that will not occur again." The Exchange states that the Fine Income Procedures provided a more direct commitment by NYSE Regulation to ensure the proper exercise of NYSE Regulation's power to fine member organizations and the proper use by NYSE Regulation of fines collected.[51] The Exchange notes that because the Delegation Agreement is no longer in effect, it is the Exchange itself that fines member organizations, and the Exchange is subject to the limitations of Section 4.05.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[52] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act, which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange.[53] In addition, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[54]

As the Exchange notes, it implemented the Fine Income Procedures in connection with the Archipelago Merger, which had the effect of demutualizing New York Stock Exchange, Inc. (the predecessor to New York Stock Exchange LLC) by separating NYSE's equity ownership from trading privileges and converting it to a for-profit entity.[55] According to the Exchange, at that time it had delegated certain of its regulatory functions to its then subsidiary, NYSE Regulation, pursuant to the Delegation Agreement. In September 2015, the Commission approved the Exchange's proposal to revise its regulatory structure by amending various Exchange rules and the Operating Agreement, including to establish as a committee of the Board a ROC, to be composed of at least three members who satisfy the Exchange's independence requirements.[56] The Delegation Agreement recently was terminated in connection with the Exchange's reorganization of its regulatory structure that had resulted in the creation of the ROC. Because the Fine Income Procedures were instituted in connection with the delegation of certain of the Exchange's regulatory functions to NYSE Regulation, the Commission believes that it is appropriate for the Exchange to remove the Procedures because NYSE Regulation no longer performs any regulatory services on behalf of the Exchange. Further, given that the Exchange has reintegrated its regulatory functions under the oversight of the ROC, the Commission believes that Section 4.05 should continue to help ensure that the Exchange does not inappropriately use its regulatory assets, fees, fines or penalties for commercial purposes or to distribute such assets, fees, fines or penalties to its direct parent, NYSE Group, Inc., or to any other entity. Finally, the Commission believes that creation of the ROC, along with its responsibilities under Section 2.03(h)(ii) of the Operating Agreement, should help to ensure the proper oversight of the Exchange's regulatory program, including the exercise by the Exchange's regulatory staff of its power to fine member organizations, and the use of regulatory assets, fees, fines and penalties collected by the Exchange's regulatory staff.

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[39] *See* NYSE Response Letter, *supra* note 6.

[40] *See id.* at 3–4. The Commission notes that the Fine Income Procedures were reproduced in the Notice. *See* Notice, *supra* note 4, at 34394.

[41] *See id.* at 5.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *See id.* at 6.

[46] *See id.* at 6–7.

[47] *See id.* at 7–8.

[48] *See id.*

[49] *See id.* at 8.

[50] *See id.*

[51] *See id.* at 8–9.

[52] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[53] 15 U.S.C. 78f(b)(1).

[54] 15 U.S.C. 78f(b)(5).

[55] *See supra* note 8.

As noted above, the commenter raises several concerns regarding the Exchange's proposal, including by asserting that the proposal was insufficient because it did not include rule text indicating the deletion of the Procedures. The Exchange responds that the Procedures are available in the Exchange's filing and on the Exchange's Web site. The Commission believes that, because the Fine Income Procedures were internal procedures of the Exchange and were not part of the Exchange's rulebook or governing documents, it was appropriate for the Exchange to include the Procedures in its Form 19b–4 describing the proposed rule change, which were published by the Commission as part of the Notice.[57]

The commenter remarks that the NYSE should be "held to a higher standard" than other exchanges. In response, the Exchange states that, as a national securities exchange, treating it differently than any other national securities exchange based on its size, prominence or any of the other factors noted in the comment letter, among other things, would be contrary to just and equitable principles of trade.[58] The Commission previously found that Section 4.05 is consistent with the Act[59] and continues to believe that it is consistent with the Act, and that it is substantially similar to requirements relating to the use of regulatory assets, fees, fines and penalties that were approved by the Commission with respect to other exchanges, including the Exchange's affiliates—NYSE MKT LLC and NYSE Arca, Inc.[60]

The commenter also expresses the view that deleting the Fine Income Procedures would remove rules that serve to separate the Exchange's business function from its regulatory obligations, and that the Exchange's disciplinary process did not provide an adequate safeguard against "regulator misbehavior." The Commission believes that the Exchange has adopted several measures to ensure the independence of its regulatory functions including, among other things, creating a ROC, which is composed entirely of directors of the Exchange who satisfy the Exchange's independence requirements, and the CFR, which is composed of Exchange members and directors who satisfy the Exchange's independence requirements.[61]

The commenter further expresses concern that deleting the Fine Income Procedures may imply that the conduct banned by the Procedures no longer is prohibited. The Commission believes, however, that even with the deletion of the Fine Income Procedures, given the scope of Section 4.05, the Exchange would continue to be prohibited from using regulatory assets, fees, fines or penalties for other than regulatory purposes.

Finally, the commenter states that Exchange did not adequately describe why the circumstances that existed at the time the Fine Income Procedures were adopted no longer exist. The Commission notes that the Exchange's proposal states that NYSE Regulation no longer performs regulatory services on behalf of the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2016–37) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17096 Filed 7–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78334; File No. SR–BatsBZX–2016–29]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Paragraph (c) to Exchange Rule 11.27 To Describe Changes to System Functionality Necessary To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

July 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt paragraph (c) to Exchange Rule 11.27 to describe changes to System[3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan" or "Pilot").[4] In determining the scope of the proposed changes to implement the Pilot,[5] the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[56] *See* NYSE Approval Order, *supra* note 10.

[57] *See* Notice, *supra* note 4, at 34394.

[58] *See* NYSE Response Letter, *supra* note 6, at 5.

[59] *See* NYSE Approval Order, *supra* note 10, at 59842–43.

[60] *See* Notice, *supra* note 4, at 34395–96 nn.18–26 and accompanying text.

[61] *See* NYSE Approval Order, *supra* note 10, at 59838–41.

[62] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "System" is defined as the "electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(aa).

[4] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[5] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, Bats BYX Exchange, Inc. ("BYX"), Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc. ("EDGA"), Bats EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program.[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a Control Group of approximately 1400 Pilot Securities and three Test Groups with 400 Pilot Securities in each Test Group selected by a stratified sampling.[10] During the Pilot, Pilot Securities in the Control Group will be quoted and traded at the currently permissible increments. Pilot Securities in the first Test Group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second Test Group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[12] Pilot Securities in the third Test Group ("Test Group Three") will be subject to the same restrictions as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a price of a Trading Center's[13] "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[14] The same exceptions provided under Test Group Two will also be available under the Trade-at Prohibition, with an additional exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS.[15]

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraph (a) of Rule 11.27 to require Members[16] to comply with the quoting and trading provisions of the Plan.[17] The Exchange also adopted paragraph (b) of Rule 11.27 to require Members to comply with the data collection provisions under Appendix B and C of the Plan.[18]

Proposed System Changes

The Exchange proposes to adopt paragraph (c) of Exchange Rule 11.27 to describe changes to System functionality necessary to implement the Plan. Paragraph (c) of Rule 11.27 would set forth the Exchange's specific procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities. Unless otherwise indicated, paragraph (c) of Rule 11.27 would apply to order types and order type instructions in Pilot Securities in Test Groups One, Two, and Three and not to orders in Pilot Securities included in the Control Group. The proposed changes include select and discrete amendments to the operation of: (i) BZX Market Orders; (ii) Market Pegged Orders; (iii) Mid-Point Peg Orders; (iii) [sic] Discretionary Orders; (iv) [sic] Non-Displayed Orders; (v) [sic] Market Maker Peg Orders; (vi) [sic] Supplemental Peg Orders; and (vii) [sic] orders subject to the Display-Price Sliding process.

In determining the scope of these proposed changes to implement the Plan, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities. These proposed changes are designed to directly comply with the Plan and to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. As discussed below, certain of these changes are also intended to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage of certain order types in Pilot Securities and/or their limited ability to execute under the Trade-at Prohibition. Therefore, the Exchange firmly believes that these changes will have little or no impact on the operation and data collection elements of the Plan. The Exchange further believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.

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[6] 15 U.S.C. 78k–1.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] *See* Approval Order, *supra* note 4.

[10] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[11] *See* Section VI(B) of the Plan.

[12] *See* Section VI(C) of the Plan.

[13] The Plan incorporates the definition of "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a Trading Center as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent."

[14] *See* Section VI(D) of the Plan.

[15] 17 CFR 242.611.

[16] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[17] *See* Securities Exchange Act Release No. 77291 (March 3, 2016), 81 FR 12543 (March 9, 2016) (SR–BATS–2015–108).

[18] *See* Securities Exchange Act Release Nos. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (SR–BATS–2015–102); *and* 77310 (March 7, 2016), 81 FR 13012 (March 11, 2016) (SR–BATS–2016–27).

BZX Market Orders

A BZX Market Order is an order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange. BZX Market Orders shall not trade through Protected Quotations.[19] Any portion of a BZX Market Order that would execute at a price more than $0.50 or 5 percent worse than the NBBO at the time the order initially reaches the Exchange, whichever is greater, will be cancelled.[20] In order to comply with the minimum quoting increments set forth in the Plan, the Exchange proposes to state under proposed Rule 11.27(c)(1) that for purposes of determining whether a BZX Market Order's execution price is more than 5 percent worse than the NBBO under Rule 11.9(a)(2), the execution price for a buy (sell) order will be rounded down (up) to the nearest $0.05 increment.

Market Pegged Orders

The Exchange proposes to amend the operation of Market Pegged Orders to reduce risk in its System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition in Test Group Three. A Pegged Order is a limit order that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the NBBO. A Pegged Order will peg to the NBB or NBO or a certain amount away from the NBB or NBO.[21] A Market Pegged Order is pegged to the contra-side NBBO.[22] A User[23] entering a Market Pegged Order can specify that such order's price will offset the inside quote on the contra-side of the market by an amount (the "Offset") set by the User. Market Pegged Orders are not eligible to be displayed on the Exchange.

In Test Groups One and Two, the Exchange proposes to modify the behavior of Market Pegged Order when it is locked by an incoming BZX Post Only Order[24] or Partial Post Only at Limit Order[25] that does not remove liquidity pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7),[26] respectively. In such case, the Market Pegged Order would be converted to an executable order and will remove liquidity against such incoming order. In no case would a Market Pegged Order execute against an incoming BZX Post Only Order or Partial Post Only at Limit Order if an order with higher priority is on the BZX Book.[27] Specifically, if an order other than a Market Pegged Order maintains higher priority than one or more Market Pegged Orders, the Market Pegged Order(s) with lower priority will not be converted, as described above, and the incoming BZX Post Only Order or Partial Post Only at Limit Order will be posted or cancelled in accordance with Rule 11.9(c)(6) or Rule 11.9(c)(7).

The Exchange notes that Market Pegged Orders are aggressive by nature and believes executing the order in such circumstance is appropriate. The Exchange also notes that the proposed behavior for Market Pegged Orders in Test Groups One and Two is identical to the operation of orders with the Super Aggressive Routing instruction under Exchange Rule 11.13(b)(4)(C). When an order with a Super Aggressive instruction is locked by an incoming BZX Post Only Order or Partial Post Only at Limit Order that does not remove liquidity pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7), respectively, the order is converted to an executable order and will remove liquidity against such incoming order. In addition, like as proposed above, in no case would an order with a Super Aggressive instruction execute against an incoming BZX Post Only Order or Partial Post Only at Limit Order if an order with higher priority is on the BZX Book. The Exchange believes this change is reasonable and appropriate due to the limited usage of Market Pegged Orders in Pilot Securities, to avoid unnecessary additional System complexity, and to ensure the Market Pegged Order may execute in such circumstance.

The Exchange also proposes to not accept Market Pegged Orders in Test Group Three based on limited current usage, additional System complexity, and their limited ability to execute under the Trade-at Prohibition. Exchange Rule 11.27(a)(6)(D) sets forth the Trade-at Prohibition, which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours,[28] unless an enumerated exception applies.[29] The Exchange believes that their de minimis usage and limited ability to execute due to the Trade-at Prohibition does not justify the complexity that would be created by supporting Market Pegged Orders in Test Group Three. A vast majority of Market Pegged Orders are entered into the System with a zero Offset and, therefore, create a locked market with the contra-side NBBO. Under the Trade-at Prohibition, a Market Pegged Order would not be eligible for execution at the locking price, including when a Trade-at Intermarket Sweep Order ("ISO")[30] is entered, because of non-cleared contra-side Protected Quotations. For example, assume the NBBO is $10.00 (NYSE) × $10.05 (Nasdaq) in a Test Group 3 security. A Market Pegged Order to buy at $10.10 with a zero Offset is entered on the Exchange. The order would be ranked and hidden on the BZX Book at $10.05. A Trade-at ISO to sell at $10.05 is then entered. In this example, no execution occurs on the Exchange because Nasdaq is displaying an order to sell at $10.05. The Trade-at ISO instruction only indicates that all of the better and equal priced buy orders have been cleared. It does not indicate that the seller has cleared any Protected Offers. Therefore, the Exchange proposes to not accept Market Pegged

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[19] *See* Exchange Rule 11.9(a)(2).

[20] *Id.*

[21] *See* Exchange Rule 11.9(c)(8).

[22] *See* Exchange Rule 11.9(c)(8)(B).

[23] A "User" is defined as any member or sponsored participant of the Exchange who is authorized to obtain access to the System pursuant to Rule 11.3. *See* Exchange Rule 1.5(cc).

[24] *See* Exchange Rule 11.9(c)(6).

[25] *See* Exchange Rule 11.9(c)(7).

[26] A BZX Post Only Order will remove contra-side liquidity from the BZX Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. *See* Exchange Rule 11.9(c)(6). A Partial Post Only at Limit Order will remove liquidity from the BZX Book up to the full size of the order if, at the time of receipt, it can be executed at prices better than its limit price. *See* Exchange Rule 11.9(c)(7).

[27] The term "BZX Book" is defined as the "System's electronic file of orders." *See* Exchange Rule 1.5(e).

[28] The term "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." *See* Exchange Rule 1.5(w).

[29] *See also* Section VI(D) of the Plan.

[30] A Trade-at ISO is a Limit Order for a Pilot Security that meets the following requirements: (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. *See* Exchange Rule 11.27(a)(7)(A)(i). These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. *Id.*

Orders in Test Group Three in an effort to reduce unnecessary System complexity, avoid an internally locked book, and due to the limited execution opportunities for Market Pegged Orders due to the Trade-at Prohibition.

Mid-Point Peg Orders

A Mid-Point Peg Order is an order whose price is automatically adjusted by the System in response to changes in the NBBO to be pegged to the midpoint of the NBBO, or, alternatively, pegged to the less aggressive of the midpoint of the NBBO or one minimum price variation[31] inside the same side of the NBBO as the order.[32] The Plan and current Exchange rules permit the acceptance of orders priced to execute at the midpoint of the NBBO to be ranked and accepted in increments of less than $0.05.[33] Consistent with previous guidance issued by the Participants,[34] the Exchange proposes to amend the operation of Mid-Point Peg Orders to explicitly state that Mid-Point Peg Orders in Pilot Securities may not be entered in increments other than $0.05. The System will execute a Mid-Point Peg Order: (i) In $0.05 increments priced better than the midpoint of the NBBO; or (ii) at the midpoint of the NBBO, regardless of whether the midpoint of the NBBO is in an increment of $0.05. In order to comply with the minimum quoting and trading increments of the Plan and reduce unnecessary System complexity, a Mid-Point Peg Order will not be permitted to alternatively peg to one minimum price variation inside the same side of the NBBO as the order in Pilot Securities. The Exchange believes that the current de minimis usage of the alternative pegging functionality in Pilot Securities does not justify the complexity and risk that would be created by re-programming the System to support this functionality under the Plan.

Discretionary Orders

The Exchange proposes to not accept Discretionary Orders in all Test Groups, including the Control Group, to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities. In sum, a Discretionary Order is a Limit Order with a displayed or non-displayed ranked price and size and an additional non-displayed "discretionary price".[35] The discretionary price is a non-displayed upward offset at which a User is willing to buy, if necessary, or a non-displayed downward offset at which a User is willing to sell, if necessary. The System changes necessary for a Discretionary Order to comply with the Plan become increasingly complex because both the displayed price and discretionary price must comply with the Plan's minimum quoting and trading increments as well as the Trade-at restriction in Test Group Three. In addition, Users do not currently set discretionary prices less than $0.05 away from the order's displayed price and the Exchange does not anticipate Users doing so under the Plan. To date, Discretionary Orders are rarely entered in Pilot Securities and the Exchange anticipates their usage to further decrease due to the Plan's minimum quoting increments. The Exchange believes that the current extremely limited usage of Discretionary Orders in Pilot Securities does not justify the additional System complexity that would be created by supporting Discretionary Orders. As a result of these factors the Exchange proposes to not accept Discretionary Orders in all Test Groups and the Control Group.

Non-Displayed Orders

The Exchange proposes to re-price to the midpoint of the NBBO Non-Displayed Orders in Test Group Three that are priced in a permissible increment better than the midpoint of the NBBO. A Non-Displayed Order is a Market or Limit Order that is not displayed on the Exchange.[36] Exchange Rule 11.27(a)(6)(D) incorporates the Trade-at Prohibition in the Exchange's rules. The Trade-at Prohibition prevents the execution of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. A Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is a Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. Unless an exception applies, a Non-Displayed Order that is able to execute at the price of the Protected Quotation would not be able to do so in Test Group Three due to the Trade-at Prohibition and the Exchange's priority rule.[37] Furthermore, such aggressively priced orders would not be able to post to the BZX Book at the contra-side Protected Quotation, and re-pricing the order to the midpoint of the NBBO would increase execution opportunities under normal market conditions. However, orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities for Non-Displayed Orders in Test Group Three, the Exchange proposes to re-price to the midpoint of the NBBO Non-Displayed Orders that are priced in a permissible increment better than the midpoint of the NBBO.

Market Maker Peg Orders

A Market Maker Peg Order is a Limit Order that is automatically priced by the System at the Designated Percentage (as defined in Exchange Rule 11.8) away from the then current NBB and NBO, or if no NBB or NBO, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Exchange Rule 11.8(d).[38] Should the above pricing result in a Market Maker Peg Order being priced at an increment other than $0.05, the Exchange proposes to round an order to buy (sell) up (down) to the nearest $0.05 increment in order to comply with the minimum quoting increments of the Plan.

Supplemental Peg Orders

The Exchange proposes to not accept Supplemental Peg Orders in Test Group Three in order to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition. A Supplemental Peg Order is a non-displayed Limit Order that posts to the BZX Book, and thereafter is eligible for execution at the NBB for buy orders and NBO for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price.[39] In sum, Supplemental Peg Orders are only executable at the NBBO against an order that is in the process of being routed away. In such case, the Exchange is not displaying a Protected Quotation and, therefore, the Supplemental Peg Order would be unable to execute in Test Group Three due to the Trade-at

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[31] *See* Exchange Rule 11.11.

[32] *See* Exchange Rule 11.9(c)(9).

[33] *See* Sections VI(B), (C), and (D) of the Plan. *See also* Exchange Rules 11.27(a)(4), (a)(5), and (a)(6).

[34] *See e.g.,* Question 42 of the *Tick Size Pilot Program Trading and Quoting FAQs available at http://www.finra.org/sites/default/files/TSPP-Trading-and-Quoting-FAQs.pdf.*

[35] *See* Exchange Rule 11.9(c)(10).

[36] *See* Exchange Rule 11.9(c)(11).

[37] Under Exchange Rule 11.12(a)(2), displayed Limit Orders have priority over Non-Displayed Limit Orders.

[38] *See* Exchange Rule 11.9(c)(16).

[39] *See* Exchange Rule 11.9(c)(19).

Prohibition.[40] Therefore, the Exchange proposes to not accept Supplemental Peg Orders in Test Group Three.

Display-Price Sliding

Under the Display-Price Sliding process, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market, will be ranked at the locking price in the BZX Book and displayed by the System at one minimum price variation (*i.e.*, $0.05) below the current NBO (for bids) or one minimum price variation above the current NBB (for offers).[41] The ranked and displayed prices of an order subject to the Display-Price Sliding process may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO.[42]

As described above, Exchange Rule 11.27(a)(6)(D) sets forth the Trade-at Prohibition, which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. Orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities and qualify for the mid-point exception to the Trade-at Prohibition, the Exchange proposes to rank orders in Test Group Three that are subject to the Display-Price Sliding process at the midpoint of the NBBO in the BZX Book and display such orders one minimum price variation below the current NBO (for bids) or one minimum price variation above the current NBB (for offers).

The Exchange also proposes to cancel orders subject to Display-Price Sliding in Test Group Three that are only to be adjusted once and not multiple times in the event the NBBO widens and a contra-side Non-Displayed Order is resting on the BZX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to the increased minimum quoting increments under the Plan, the Exchange is unable to safely re-price an order subject to single Display-Price Sliding in Test Group Three to the original locking price in such circumstances and doing so would add additional System complexity and risk. As discussed above, the Exchange proposes to rank orders in Test Group Three subject to the Display-Price Sliding process at the midpoint of the NBBO. In the event the NBBO changes such that an order subject to Display-Price Sliding would not lock or cross a Protected Quotation of an external market, the order will receive a new timestamp, and will be displayed at the order's limit price.[43] Due to technological limitations arising from the increased minimum quoting increments under the Plan, however, the Exchange is unable to safely re-program its System to re-price such order to the original locking price when the NBBO widens and a contra-side Non-Displayed Order is resting on the BZX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Therefore, the Exchange proposes to cancel orders subject to the single Display-Price Sliding process in such circumstances. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process.

Ministerial Change

Currently, both Interpretation and Policy .03 to Rule 11.27(a) and Interpretation and Policy .11 to Rule 11.27(b) state that Rule 11.27 shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan). The Exchange proposes to include this language at the beginning of Rule 11.27 and, therefore, proposes to delete both Interpretation and Policy .03 to Rule 11.27(a) and Interpretation and Policy .11 to Rule 11.27(b) as those provisions would be redundant and unnecessary. The Exchange also proposes to amend the last sentence of Rule 11.27(a)(4) to specify that the current permissible price increments are set forth under Exchange Rule 11.11, Price Variations.

Implementation Date

If the Commission approves the proposed rule change, the proposed rule change will be effective upon Commission approval and shall become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[44] in general, and furthers the objectives of Section 6(b)(5) of the Act[45] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The proposed rule change is designed to comply with the Plan, reduce complexity and enhance System resiliency while not adversely affecting the data collected under the Plan. Therefore, the Exchange believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan and, as discussed further below, other applicable regulations.

The Exchange believes that the proposed changes regarding BZX Market Orders, Mid-Point Peg Orders, Market Maker Peg Orders, and Display-Price Sliding are consistent with the Act because they are intended to modify the Exchange's System to comply with the provisions of the Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that these proposals are intended to comply with the Plan, the Exchange believes that these proposals are in furtherance of the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

The Exchange also believes that its proposed changes to Market Pegged Orders, Discretionary Orders, Non-Displayed Orders, Supplemental Peg Orders, and Display-Price Sliding are also consistent with the Act because they are intended to eliminate unnecessary System complexity and risk based on the de minimis current usage of such order types and instructions in Pilot Securities and/or their limited ability to execute under the Plan's minimum trading and quoting increments or Trade-at Prohibition.[46] For example, during March 2016, the alternative pegging functionality of Mid-Point Peg Orders, Market Pegged Orders, Non-Displayed Orders, and Supplemental Peg Orders accounted for 0.01%, 0.02%, 0.92%, and 0.01%, respectively, of volume in eligible Pilot Securities on the Exchange, BYX, EDGA and EDGX combined. Notably, Discretionary Orders accounted for 0.00% of volume in eligible Pilot Securities on the Exchange, BYX, EDGA and EDGX combined.

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[40] The Exchange notes that the likelihood of a Supplemental Peg Order qualifying for an exception to the Trade-at Prohibition is small. For example, Supplemental Peg Orders are only executable against orders that are to be routed away and would not be eligible to execute against an incoming ISO or Trade-at ISO. Also, the Exchange would not be displaying a Protected Quotation. In addition, the Exchange does not frequently receive orders of Block Size and, in order to qualify for the Block exception, the contra-side Block Order must be routable and the Supplemental Peg Order be of Block Size.

[41] *See* Exchange Rule 11.9(g)(1)(A).

[42] *See* Exchange Rule 11.9(g)(1)(C).

[43] *Id.*

[44] 15 U.S.C. 78f(b).

[45] 15 U.S.C. 78f(b)(5).

The Commission adopted Regulation Systems Compliance and Integrity ("Regulation SCI") in November 2014 to strengthen the technology infrastructure of the U.S. securities markets.[47] Regulation SCI is designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission's oversight and enforcement of securities market technology infrastructure. Regulation SCI required the Exchange to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act. Each of these proposed changes are intended to reduce complexity and risk in the System to ensure the Exchange's technology remains robust and resilient. In determining the scope of the proposed changes, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities.[48] The potential complexity results from code changes for a majority of the Exchange's order types, which requires the implementation and testing of a separate branch of code for each Test Group. For example, the Exchange currently utilizes one branch of code for which to implement and test changes. Development work for the Pilot results in the creation of four additional branches of code that are to be developed and tested (*e.g.,* Control Group + three Test Groups). The Exchange determined that the changes proposed herein are necessary to ensure continued System resiliency in accordance with the requirements of Regulation SCI. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In addition, each of these proposed changes would have a de minimis to zero impact on the data reported pursuant to the Plan. As evidenced above, Market Pegged Orders, Discretionary Orders, the alternative pegging functionality of Mid-Point Peg Orders, and Supplemental Peg Orders are infrequently used in Pilot Securities or the execution of such orders would be scarce due to the Plan's minimum trading and quoting requirement and Trade-at Prohibition. The limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan. Therefore, the Exchange believes each proposed change is a reasonable means to ensure that the System's integrity, resiliency, and availability continues to promote the maintenance of fair and orderly markets. Due to the additional complexity, limited usage and execution opportunities, the Exchange believes it is not unfairly discriminatory to apply the changes proposed herein to only Pilot Securities as such changes are necessary to reduce complexity and ensure continued System resiliency in accordance with the requirements of Regulation SCI. The Exchange also believes the proposed changes to Non-Displayed Orders, and orders subject to the Display-Price Sliding process in Test Group Three are consistent with the Act because they are designed to increase the execution opportunities for such order types in compliance with the mid-point exception to the Trade-at Prohibition. The Exchange also believes the proposed change to Market Pegged Orders in Test Groups One and Two is consistent with the Act because it is identical to the operation of the Super Aggressive instruction under Exchange Rule 11.13(b)(4)(C). The Exchange notes that Market Pegged Orders are aggressive by nature and believes executing the order in such circumstance is reasonable and appropriate.

The Exchange also believes it is reasonable and appropriate to cancel an order subject to the single Display-Price Sliding process in Test Group Three in the event that the NBBO widens and a contra-side Non-Displayed Order is resting on the BZX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to technological limitations and the Plan's increased minimum quoting increments, the Exchange is unable to safely re-program its System to re-price such orders to the original locking price in such circumstances. The Exchange also anticipates that the scenario under which it proposes to cancel the Display-Price Sliding order will be infrequent in Tick Pilot Securities. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process. Therefore, the Exchange believes it is consistent with the Act to set forth this scenario in its rules so that Users will understand how the System operates and how their orders would be handled in this discrete scenario.

Lastly, the Exchange believes the ministerial changes to Rule 11.27 are also consistent with the Act as they would: (i) Clarify a provision under paragraph (a)(4); and (ii) remove redundant provisions from the rule.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan, reduce System complexity and enhance resiliency. The Exchange also notes that the proposed rule change will apply equally to all Members that trade Pilot Securities.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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[46] The Commission has also expressed concern regarding potential market instability caused by technological risks. *See e.g.,* Chair Mary Jo White, Commission, *Enhancing Our Equity Market Structure* (June 5, 2014) *available at https://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y.*

[47] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) ("Regulation SCI Approval Order").

[48] But for the Plan, the Exchange notes that it would not have proposed to amend the operation of Market Pegged Orders, Discretionary Orders, Non-Displayed Orders, Supplemental Peg Orders, and Display-Price Sliding as described herein.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. In particular, the Commission seeks comment on the issue described below.

In the Approval Order, the Commission stressed the importance of testing the impact of wider tick sizes on the trading and liquidity of the securities of small capitalization companies, and doing so in a way that produces robust results that inform future policy decisions.[49] The Commission acknowledged the complexity of the Pilot and the costs that its implementation would create for market participants, but concluded that the benefits of the empirical data that would be produced by the Pilot warranted incurring those costs.[50] As a result, the Plan requires that each Participant, including the Exchange, adopt rules that are necessary for compliance with the provisions of the Plan.[51]

While the Exchange states that the proposed rule change describes the system changes necessary to implement the Pilot, the Commission notes that the scope of the proposed changes extends beyond those required for compliance with the Plan, and would eliminate certain order types for Pilot Securities during the Pilot Period, or modify their operation in ways not required by the Plan. For example, the Exchange proposes not to accept Market Pegged Orders, Discretionary Orders, and Supplemental Peg Orders, and certain types of Mid-Point Peg Orders, in some or all Test Groups of Pilot Securities for the duration of the Pilot Period.[52] These proposals appear designed to permit the Exchange to avoid the costs of modifying these order types to comply with the Plan. The Exchange notes that these order types are infrequently used in Pilot Securities, and takes the position that "[t]he limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan."[53] At the same time, the Exchange also does not appear prepared to propose to eliminate these order types indefinitely. By contrast, the Exchange proposes to modify, in ways not required by the Plan, the operation of Market Pegged Orders and Non-Displayed Orders, and certain orders subject to the Display-Price Sliding process, in some or all Test Groups of Pilot Securities, and to incur the associated system change costs, in order to increase the "execution opportunities" for these order types for the duration of the Pilot Period.[54]

The Commission is concerned that proposed rule changes, other than those necessary for compliance with Plan, that are targeted at Pilot Securities, that have a disparate impact on different Test Groups and the Control Group, and that are to apply temporarily only for the Pilot Period, could bias the results of the Pilot and undermine the value of the data generated in informing future policy decisions. Accordingly, the Commission is concerned that the proposed rule change may not be consistent with Act, including Section 6(b)(5) thereof and Rule 608 of Regulation NMS, or with the Plan.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BatsBZX–2016–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBZX–2016–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBZX–2016–29 and should be submitted on or before August 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17093 Filed 7–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78332; File No. TP 16–10]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to Janus Detroit Street Trust, the Janus Velocity Tail Risk Hedged Large Cap ETF, and the Janus Velocity Volatility Hedged Large Cap ETF

July 14, 2016.

By letter dated July 14, 2016 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for Janus Detroit Street Trust (the "Trust") on behalf of the Trust, the Janus Velocity Tail Risk Hedged Large Cap ETF and the Janus Velocity

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[49] *See* Approval Order, *supra* note 4, at 80 FR 27515.

[50] *Id* at 27516.

[51] *See* Section II(B) of the Plan. *See also* Section IV of the Plan.

[52] The Exchange also proposes to cancel certain orders subject to the Display-Price Sliding process in certain Pilot Securities for the duration of the Pilot Period.

[53] *See supra* Item II.A.2.

[54] *See supra* Item II.A.1–2.

[55] 17 CFR 200.30–3(a)(12).

Volatility Hedged Large Cap ETF (each a "New Fund" and, collectively, the "New Funds"), any national securities exchange on or through which shares issued by the New Funds ("Shares") may subsequently trade, ALPS Distributors, Inc., and persons or entities engaging in transactions in Shares (collectively, the "Requestors") requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended ("Exchange Act") and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares ("Creation Units").

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. Each New Fund seeks to track the performance of a particular underlying index ("Index"), which for each New Fund is comprised of shares of exchange-traded products ("ETPs"). As a result of the Trust and the ALPS ETF Trust[1] entering into an Agreement and Plan of Reorganization and Termination, the Janus Velocity Tail Risk Hedged Large Cap ETF and the Janus Velocity Volatility Hedged Large Cap ETF will acquire the VelocityShares Tail Risk Hedged Large Cap ETF and the VelocityShares Volatility Hedged Large Cap ETF, respectively, in exchange for shares of such New Fund (or cash in exchange for any fractional shares of an Existing Fund) and the assumption by each New Fund of all of the respective corresponding Existing Fund's liabilities, if any, as of the closing date. In return, the Existing Funds will distribute the shares of the New Funds to the Existing Funds' shareholders, and the Existing Funds will terminate. Immediately after the reorganization, each former shareholder of each Existing Fund will own shares of the corresponding New Fund that will be approximately equal to the value of that shareholder's full shares of such Existing Fund as of the closing date. Thus, Requestors represent that although the New Funds will effectively be the continuation of the Existing Funds, and will be substantially identical in all material respects to the Existing Funds, they cannot rely on the terms and conditions of the Existing Relief because the Trust and the New Funds are legal entities different and distinct from the ALPS ETF Trust and the Existing Funds.

The Requestors represent that each New Fund's underlying index will reflect the performance of a portfolio consisting of an exposure to a large cap equity portfolio, consisting of three underlying ETFs which track the S&P 500 index ("Underlying Large-Cap ETFs") and a volatility strategy to hedge "tail risk" events (which are market events that occur rarely but may have severe consequences when they do occur) consisting of two underlying ETFs which reflect leveraged or inverse positions on the S&P 500 VIX Short-Term Futures Index ("Underlying Volatility ETFs"). The underlying index, at each monthly rebalance, consists of an 85% allocation to the Underlying Large-Cap ETFs and a 15% allocation to the Underlying Volatility ETFs. The New Funds intend to operate as "ETFs of ETFs" by seeking to track the performance of the respective underlying Index by investing at least 80% of their assets in the ETPs that comprise each Index. Substantially identical in all material respects to the Existing Funds, the Requestors represent that they intend to enter into swap agreements for each New Fund designed to provide exposure to (a) the Underlying Volatility ETFs and/or (b) leveraged and/or inverse positions on the S&P 500 VIX Short-Term Futures Index directly. Except for the fact that the New Funds will operate as ETFs of ETFs and the Requestors represent that they intend to enter into swaps for each New Fund to obtain the leveraged and/or inverse exposure to the Underlying Volatility ETFs and/or the S&P 500 VIX Short-Term Futures Index, the Requestors represent that the New Funds will operate in a manner identical to the ETPs that comprise each Index and will effectively be the continuation of the Existing Funds.

The Requestors represent, among other things, the following:

- Shares of the New Funds will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV") and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the New Funds will be listed and traded on the NYSE Arca (the "Exchange") or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act;
- All ETPs in which the New Funds invest will meet all conditions set forth in a relevant class relief letter,[2] will have received individual relief from the Commission, or will be able to rely on individual relief even though they are not named parties;
- At least 70% of each New Fund will be comprised of component securities that meet the minimum public float and minimum average daily trading volume thresholds under the "actively-traded securities" definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the relevant New Fund; provided, however, that if the New Fund has 200 or more component securities, then 50% of the component securities will meet the actively-traded securities thresholds;
- All the components of each Index will have publicly available last sale trade information;
- The intra-day proxy value of each New Fund per share and the value of each Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, the New Funds' custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of each New Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per-share basis, the current value of the securities and cash to be deposited as consideration for the purchase of Creation Units;
- The arbitrage mechanism will be facilitated by the transparency of the New Funds' portfolio and the

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[1] On June 21, 2013, the Division of Trading and Markets granted ALPS ETF Trust exemptive relief (the "Existing Relief") for the VelocityShares Tail Risk Hedged Large Cap ETF and the VelocityShares Volatility Hedged Large Cap ETF (each an "Existing Fund" and, collectively, the "Existing Funds"). Exchange Act Release No. 69831 (June 21, 2013).

[2] Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie. Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007).

availability of the intra-day indicative value, the liquidity of securities and other assets held by the New Funds, the ability of the New Funds and arbitrageurs to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;

- The New Funds will invest solely in liquid securities;
- The New Funds will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between each New Fund's market price and its NAV; and
- A close alignment between the market price of Shares and each New Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[3]

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines "distribution" to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Units of Shares of the New Funds and that a close alignment between the market price of Shares and the New Funds' NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption from Rule 101 of Regulation M, pursuant to paragraph (d) of Rule 101 of Regulation M with respect to transactions in the New Funds as described in the Letter, thus permitting persons who may be deemed to be participating in a distribution of Shares of the New Funds to bid for or purchase such Shares during their participation in such distribution.[4]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the New Funds and that a close alignment between the market price of Shares and the New Funds' NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption from Rule 102 of Regulation M, pursuant to paragraph (e) of Rule 102 of Regulation M with respect to transactions in the New Funds as described in the Letter, thus permitting the New Funds to redeem Shares of the New Funds during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, in particular that the concerns that the Commission raised in adopting Rule 10b–17 generally will not be implicated if exemptive relief, subject to the conditions below, is granted to the Trust because market participants will receive timely notification of the existence and timing of a pending distribution,[5] we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b–17.

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust is exempt from the requirements of Rules 101 with respect to transactions in the Shares of the New Funds as described in the Letter, thus permitting persons who may be deemed to be participating in a distribution of Shares of the New Funds to bid for or purchase such Shares during their participation in such distribution as described in the Letter.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust is exempt from the requirements of Rule 102 with respect to transaction in the Shares of the New Funds as described in the Letter, thus permitting the New Funds to redeem Shares of the New Funds during the continuous offering of such Shares as described in the Letter.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, subject to the conditions contained in this order, is exempt from the requirements of Rule 10b–17 with respect to transactions in the Shares of the New Funds as described in the Letter.

This exemption from Rule 10b–17 is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

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[3] ETFs operate under exemptions from the definitions of "open-end company" under Section 5(a)(1) of the 1940 Act and "redeemable security" under Section 2(a)(32) of the 1940 Act. The ETFs and their securities do not meet those definitions.

[4] Additionally, we confirm the interpretation that a redemption of Creation Units of Shares of the New Funds and the receipt of securities in exchange by a participant in a distribution of Shares of the New Funds would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

[5] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the New Funds. This is because it is not possible for the New Funds to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based upon the representations of the Requestors in the Letter, that the provision of the notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b–17.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or representations may require a different response. Persons relying upon this exemption shall discontinue transactions involving the Shares of the New Funds, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors, and as is the case with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the New Fund's NAV. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17107 Filed 7–19–16; 8:45 am]

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[6] 17 CFR 200.30–3(a)(6) and (9).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78324; File No. SR–NYSEMKT–2016–69]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to the Customer Best Execution Auction per Rule 971.1NY

July 14, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 8, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to the Customer Best Execution Auction ("CUBE"), per Rule 971.1NY, until January 18, 2017. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot period applicable to certain aspects of the Customer Best Execution—or CUBE—Auction, which is currently set to expire on July 18, 2016, until January 18, 2017.

Background

Rule 971.1NY sets forth an electronic crossing mechanism for single-leg orders with a price improvement auction on the Exchange, referred to as the CUBE Auction.[4] The CUBE Auction, which was approved in April 2014, is designed to provide price improvement for paired orders of any size.[5] Two aspects of the CUBE were approved on a pilot basis—Rule 971.1NY(b)(1)(B), which establishes the permissible range of executions for CUBE Auctions for fewer than 50 contracts; and Rule 971.1NY(b)(8), which establishes that the minimum size for a CUBE Auction is one contract (together, the "CUBE Pilot").

An ATP Holder may initiate a CUBE Auction by electronically submitting for execution a limit order it represents as agent on behalf of a public customer, broker dealer, or any other entity ("CUBE Order") against principal interest or against any other order it represents as agent, provided the initiating ATP Holder complies with Rule 971.1NY.[6] Rule 971.1NY(b)(1) sets forth the permissible range of executions for a CUBE Order.[7] Pursuant to the CUBE Pilot, a CUBE Order for fewer than 50 contracts is subject to tighter ranges of execution than larger CUBE Orders to maximize price improvement.[8] Specifically, if the CUBE Order is for fewer than 50 contracts, the range of permissible execution will be equal to or better than the National Best Bid/Offer ("NBBO"), provided that such price must be at least one cent better than any displayed interest in the Exchange's Consolidated Book.[9]

The CUBE Pilot was initially approved for a one-year pilot, and has since been extended for two subsequent years.[10] Pursuant to Commentary .01 to Rule 971.1NY, the CUBE Pilot would, if not amended, end on July 18, 2016. In connection with the CUBE Pilot, the Exchange agreed to submit certain data to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the CUBE Auction. [11]

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See generally* Rule 971.1NY (Electronic Cross Transactions).

[5] *See* Securities Exchange Act Release No. 72025 (April 25, 2014), 79 FR 24779 (May 1, 2014) (NYSEMKT–2014–17) (the "CUBE Approval Order").

[6] In addition, CUBE provides for the automatic execution, under certain conditions, of a crossing transaction where there is a public customer order in the same options series on each side.

[7] Subject to specified exceptions, a CUBE Order to buy (sell) may execute at prices equal to or between the initiating price as the upper (lower) bound and the National Best Bid ("NBB") (National Best Offer ("NBO")) as the lower (upper) bound. *See* Rule 971.1NY(b).

[8] *See* Rule 971.1NY(b)(1)(B). Rule 971.1NY(b)(8), also subject to the pilot period, provides that the minimum size for a CUBE Auction is one contract.

[9] *See* Rule 971.1NY(b)(1)(B).

[10] *See* CUBE Approval Order, *supra,* n. 5. The CUBE Pilot was subsequently extended, most recently until July 18, 2016, in order to align the expiration of the pilot period with that of other competing options exchange that offer electronic price improvement auctions similar to the CUBE. *See* Securities Exchange Act Release Nos. 74695 (April 9, 2015), 80 FR 20274 (April 15, 2015) (SR–NYSEMKT–2015–28); 75460 (July 15, 2015), 80 FR 43140 (July 21, 2015) (SR–NYSEMKT–2015–48).

Proposal To Extend the Operation of the CUBE Pilot

The Exchange implemented the CUBE Auction to provide an electronic crossing mechanism for single-leg orders with a price improvement auction. The CUBE Pilot was designed to create tighter markets and ensure that each order receives the best possible price. The Exchange believes that the CUBE Pilot attracts order flow and promotes competition and price improvement opportunities for CUBE Orders of fewer than 50 contracts. The Exchange believes that extending the pilot period is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the CUBE Pilot that the Exchange has committed to provide.[12] As such, the Exchange believes that it is appropriate to extend the current operation of the Pilot. Through this filing, the Exchange seeks to amend Commentary .01 to Rule 971.1NY and extend the current pilot period until January 18, 2017.[13] The Exchange notes that it would retain the text of Rules 971.1NY(b)(1)(B) and 971.1NY(b)(8). In further support of this proposed rule change, the Exchange would continue to submit to the Commission detailed data from, and analysis of, the CUBE Pilot. Further, in January 2016, the Exchange provided the Commission certain additional requested data regarding trading in the CUBE Auction for the six (6) month period from January 1, 2015 through June 30, 2015 and agreed to make a summary of this data provided publicly available.

The Exchange continues to believe that there remains meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the CUBE Auction. The Exchange believes the additional data will substantiate the Exchange's belief and provide further evidence in support of permanent approval of the CUBE Pilot.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(5) of the Act [15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that extending the pilot period is consistent with these principles because the CUBE Pilot is reasonably designed to create tighter markets and ensure that each order receives the best possible price, which benefits investors by increasing competition thereby maximizing opportunities for price improvement. The proposed extension would allow the CUBE Pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the CUBE Pilot. Because the CUBE Pilot is applicable to all CUBE Orders for fewer than 50 contracts, and to the requirement that the minimum size of the CUBE Auction is one contract, the proposal to extend the pilot merely acts to maintain status quo on the Exchange, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the CUBE Pilot to ascertain whether there is meaningful competition for all size orders and whether there is an active and liquid market functioning on the Exchange outside of the CUBE Auction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional period and would allow for further analysis of the CUBE Pilot. In addition, the proposed extension would allow the CUBE Pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the CUBE Pilot. Thus, the proposal would also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[18] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[19]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. The Commission has therefore determined to waive the 30-day operative delay and designate the proposed rule change as operative upon filing with the Commission.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

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[11] *See* CUBE Approval Order, *supra* n. 5, at 79 FR 24779, at 24785–86, fn. 94–95. *See also* Commentary .01 to Rule 971.1NY.

[12] *Id.*

[13] *See* proposed Commentary .01 to Rule 971.1NY.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(a)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *Id.*

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[21] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEMKT–2016–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2016–69. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2016–69, and should be submitted on or before August 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17095 Filed 7–19–16; 8:45 am]

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[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78333; File No. SR–BatsBYX–2016–17]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 11.27 To Describe Changes to System Functionality Necessary To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

July 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on 29 June, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt paragraph (c) to Exchange Rule 11.27 to describe changes to System[3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan" or "Pilot").[4] In determining the scope of the proposed changes to implement the Pilot,[5] the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities. The Exchange also proposes to amend paragraph (a) of Rule 11.27 to specify that orders entered into the Exchange's Retail Price Improvement ("RPI") Program qualify for certain exceptions to the Plan.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, Bats BZX Exchange, Inc. ("BZX"), Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc. ("EDGA"), Bats EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program.[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "System" is defined as the "electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(aa).

[4] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[5] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan.

[6] 15 U.S.C. 78k–1.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] *See* Approval Order, *supra* note 4.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a Control Group of approximately 1400 Pilot Securities and three Test Groups with 400 Pilot Securities in each Test Group selected by a stratified sampling.[10] During the Pilot, Pilot Securities in the Control Group will be quoted and traded at the currently permissible increments. Pilot Securities in the first Test Group (“Test Group One”) will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second Test Group (“Test Group Two”) will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[12] Pilot Securities in the third Test Group (“Test Group Three”) will be subject to the same restrictions as Test Group Two and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at a price of a Trading Center’s[13] “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.[14] The same exceptions provided under Test Group Two will also be available under the Trade-at Prohibition, with an additional exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS.[15]

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraph (a) of Rule 11.27 to require Members[16] to comply with the quoting and trading provisions of the Plan.[17] The Exchange also adopted paragraph (b) of Rule 11.27 to require Members to comply with the data collection provisions under Appendix B and C of the Plan.[18]

Proposed System Changes

The Exchange proposes to amend paragraph (a) of Rule 11.27 to specify that orders entered into the Exchange’s RPI Program qualify for certain exceptions to the Plan. The Exchange also proposes to adopt paragraph (c) of Exchange Rule 11.27 to describe changes to System functionality necessary to implement the Plan. Paragraph (c) of Rule 11.27 would set forth the Exchange’s specific procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities. Unless otherwise indicated, paragraph (c) of Rule 11.27 would apply to order types and order type instructions in Pilot Securities in Test Groups One, Two, and Three and not to Pilot Securities included in the Control Group. The proposed changes include select and discrete amendments to the operation of: (i) BYX Market Orders; (ii) Market Pegged Orders; (iii) Mid-Point Peg Orders; (iii) Discretionary Orders; (iv) Non-Displayed Orders; (v) Market Maker Peg Orders; (vi) Supplemental Peg Orders; and (vii) orders subject to the Display-Price Sliding process.

In determining the scope of these proposed changes to implement the Plan, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities. These proposed changes are designed to directly comply with the Plan and to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. As discussed below, certain of these changes are also intended to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage of certain order types in Pilot Securities and/or their limited ability to execute under the Trade-at Prohibition. Therefore, the Exchange firmly believes that these changes will have little or no impact on the operation and data collection elements of the Plan. The Exchange further believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.

RPI Program

In November 2012, the Commission approved the RPI Program on a pilot basis.[19] The Program is designed to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. Under the Program, all Exchange Users[20] are permitted to provide potential price improvement for Retail Orders[21] in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation or the national best offer that is a Protected Quotation.[22]

Exchange Rule 11.27(a)(4) sets forth the applicable limitations for securities in Test Group One. Consistent with the language of the Plan, Rule 11.27(a)(4) provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in increments other than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by the applicable Participant, SEC and Exchange rules.[23] Exchange Rule 11.27(a)(5) sets forth the applicable quoting and trading requirements for securities in Test Group Two. This provision states that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Two in increments other than $0.05. In Test Groups One and Two, however, orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. Therefore, the Exchange proposes to amend Rule 11.27(a)(4) and (5) to also specify that the RPI Program qualifies as a Participant-operated liquidity program under the Plan and that orders entered into the RPI Program may be ranked and accepted in increments of less than $0.05 in Test Groups One and Two.

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[10] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[11] *See* Section VI(B) of the Plan.

[12] *See* Section VI(C) of the Plan.

[13] The Plan incorporates the definition of “Trading Center” from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a Trading Center as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.”

[14] *See* Section VI(D) of the Plan.

[15] 17 CFR 242.611.

[16] The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” *See* Exchange Rule 1.5(n).

[17] *See* Securities Exchange Act Release No. 77793 (May 10, 2016), 81 FR 30366 (May 16, 2016) (SR–BatsBYX–2016–07).

[18] *See* Securities Exchange Act Release No. 77418 (March 22, 2016), 81 FR 17213 (March 28, 2016) (SR–BatsBYX–2016–01).

[19] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (“RPI Approval Order”) (SR–BYX–2012–019).

[20] A “User” is defined as any member or sponsored participant of the Exchange who is authorized to obtain access to the System pursuant to Rule 11.3. *See* Exchange Rule 1.5(cc).

[21] A “Retail Order” is defined in Exchange Rule 11.24(a)(2) as an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. The definition of Retail Order is also substantially similar to the definition of Retail Investor Order under the Plan. *See* Section I(DD) of the Plan.

[22] The term Protected Quotation is defined in Exchange Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in Exchange Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (“NBB”) and national best offer (“NBO”, together with the NBB, the “NBBO”) will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

Exchange Rule 11.27(a)(5) also sets forth the applicable trading restrictions for Test Group Two securities. Absent any of the exceptions listed in the Rule, no Member may execute orders in any Pilot Security in Test Group Two in price increments other than $0.05. Consistent with the language of the Plan, the Rule provides that Pilot Securities in Test Group Two may trade in increments of less than $0.05 where a Retail Investor Order is provided with price improvement that is at least $0.005 better than the best protected bid and best protected offer (“PBBO”).[24] The Exchange proposes to amend Rule 11.27(a)(5) to specify that Retail Orders entered into the Exchange’s RPI Program qualify as Retail Investor Orders and may be provided with price improvement that is at least $0.005 better than the PBBO.

Exchange Rule 11.27(a)(6) sets forth the applicable quoting and trading restrictions for Pilot Securities in Test Group Three. The rule provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Three in increments other than $0.05. However, orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. As proposed for Rules 11.27(a)(4) and (5) above, the Exchange similarly proposes to amend Rule 11.27(a)(6) to also specify that the RPI Program qualifies as a Participant-operated liquidity program under the Plan and that orders entered into the RPI Program may be ranked and accepted in increments of less than $0.05.

The rule also states that, absent any of the applicable exceptions, no Member that operates a Trading Center may execute orders in any Pilot Security in Test Group Three in price increments other than $0.05. Exchange Rule 11.27(a)(6)(C) sets forth the exceptions pursuant to which Pilot Securities in Test Group Three may trade in increments of less than $0.05. One exception is that Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO. As proposed for Rule 11.27(a)(5) above, the Exchange similarly proposes to amend Rule 11.27(a)(6) to specify that Retail Orders entered into the Exchange’s RPI Program qualify as Retail Investor Orders and may be provided with price improvement that is at least $0.005 better than the PBBO.

Exchange Rule 11.27(a)(6)(D) sets forth the Trade-at Prohibition, which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours,[25] absent any of the exceptions set forth in Rule 11.27(a)(6)(D). Consistent with the Plan, Exchange Rule 11.27(a)(6)(D) excepts an order that is a Retail Investor Order that is executed with at least $0.005 price improvement from the Trade-at Prohibition. The Exchange proposes to amend Rule 11.27(a)(6)(D) to specify that Retail Orders entered into the Exchange’s RPI Program qualify as Retail Investor Orders and may be provided with price improvement that is at least $0.005 better than the PBBO.

BYX Market Orders

A BYX Market Order is an order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange. BYX Market Orders shall not trade through Protected Quotations.[26] Any portion of a BYX Market Order that would execute at a price more than $0.50 or 5 percent worse than the NBBO at the time the order initially reaches the Exchange, whichever is greater, will be cancelled.[27] In order to comply with the minimum quoting increments set forth in the Plan, the Exchange proposes to state under proposed Rule 11.27(c)(1) that for purposes of determining whether a BYX Market Order’s execution price is more than 5 percent worse than the NBBO under Rule 11.9(a)(2), the execution price for a buy (sell) order will be rounded down (up) to the nearest $0.05 increment.

Market Pegged Orders

The Exchange proposes to amend the operation of Market Pegged Orders to reduce risk in its System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition in Test Group Three. A Pegged Order is a limit order that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the NBBO. A Pegged Order will peg to the NBB or NBO or a certain amount away from the NBB or NBO.[28] A Market Pegged Order is pegged to the contra-side NBBO.[29] A User entering a Market Pegged Order can specify that such order’s price will offset the inside quote on the contra-side of the market by an amount (the “Offset Amount”) set by the User. Market Pegged Orders are not eligible to be displayed on the Exchange.

In Test Groups One and Two, the Exchange proposes to modify the behavior of Market Pegged Order when it is locked by an incoming BYX Post Only Order[30] or Partial Post Only at Limit Order[31] that does not remove liquidity pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7),[32] respectively. In such case, the Market Pegged Order would be converted to an executable order and will remove liquidity against such incoming order.[33] In no case would a Market Pegged Order execute against an incoming BYX Post Only Order or Partial Post Only at Limit Order if an order with higher priority is on the BYX Book.[34] Specifically, if an order other than a Market Pegged Order maintains higher priority than one or more Market Pegged Orders, the Market Pegged Order(s) with lower priority will not be converted, as described above, and the incoming BYX Post Only Order or Partial Post Only at Limit Order will be posted or cancelled in accordance with Rule 11.9(c)(6) or Rule 11.9(c)(7).

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[23] The Exchange proposes to amend the last sentence of Rule 11.27(a)(4) to specify that the current permissible price increments are set forth under Exchange Rule 11.11, Price Variations.

[24] Regulation NMS defines a protected bid or protected offer as a quotation in an NMS stock that (1) is displayed by an automated trading center; (2) is disseminated pursuant to an effective national market system plan; and (3) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. *See* 17 CFR 242.600(57). In the Approval Order, the Commission noted that the protected quotation standard encompasses the aggregate of the most aggressively priced displayed liquidity on all Trading Centers, whereas the NBBO standard is limited to the single best order in the market. *See* Approval Order, *supra* note 4.

[25] The term “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” *See* Exchange Rule 1.5(w).

[26] *See* Exchange Rule 11.9(a)(2).

[27] *Id.*

[28] *See* Exchange Rule 11.9(c)(8).

[29] *See* Exchange Rule 11.9(c)(8)(B).

[30] *See* Exchange Rule 11.9(c)(6).

[31] *See* Exchange Rule 11.9(c)(7).

[32] A BYX Post Only Order will remove contra-side liquidity from the BYX Book if the order is an

The Exchange notes that Market Pegged Orders are aggressive by nature and believes executing the order in such circumstance is appropriate. The Exchange also notes that the proposed behavior for Market Pegged Orders in Test Groups One and Two is identical to the operation of orders with the Super Aggressive Routing instruction under Exchange Rule 11.13(b)(4)(C). When an order with a Super Aggressive instruction is locked by an incoming BYX Post Only Order or Partial Post Only at Limit Order that does not remove liquidity pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7), respectively, the order is converted to an executable order and will remove liquidity against such incoming order. In addition, like as proposed above, in no case would an order with a Super Aggressive instruction execute against an incoming BYX Post Only Order or Partial Post Only at Limit Order if an order with higher priority is on the BYX Book. The Exchange believes this change is reasonable and appropriate due to the limited usage of Market Pegged Orders in Pilot Securities, to avoid unnecessary additional System complexity, and to ensure the Market Pegged Order may execute in such circumstance.

The Exchange also proposes to not accept Market Pegged Orders in Test Group Three based on limited current usage, additional System complexity, and their limited ability to execute under the Trade-at Prohibition. The Exchange believes that their de minimis usage and limited ability to execute due to the Trade-at Prohibition does not justify the complexity that would be created by supporting Market Pegged Orders in Test Group Three. A vast majority of Market Pegged Orders are entered into the System with a zero Offset and, therefore, create a locked market with the contra-side NBBO. Under the Trade-at Prohibition, a Market Pegged Order would not be eligible for execution at the locking price, including when a Trade-at Intermarket Sweep Order ("ISO")[35] is entered, because of non-cleared contra-side Protected Quotations. For example, assume the NBBO is $10.00 (NYSE) × $10.05 (Nasdaq) in a Test Group 3 security. A Market Pegged Order to buy at $10.10 with a zero Offset is entered on the Exchange. The order would be ranked and hidden on the BYX Book at $10.05. A Trade-at ISO to sell at $10.05 is then entered. In this example, no execution occurs on BYX because Nasdaq is displaying an order to sell at $10.05. The Trade-at ISO instruction only indicates that all of the better and equal priced buy orders have been cleared. It does not indicate that the seller has cleared any Protected Offers. Therefore, the Exchange proposes to not accept Market Pegged Orders in Test Group Three in an effort to reduce unnecessary System complexity, avoid an internally locked book, and due to the limited execution opportunities for Market Pegged Orders due to the Trade-at Prohibition.

Mid-Point Peg Orders

A Mid-Point Peg Order is an order whose price is automatically adjusted by the System in response to changes in the NBBO to be pegged to the midpoint of the NBBO, or, alternatively, pegged to the less aggressive of the midpoint of the NBBO or one minimum price variation[36] inside the same side of the NBBO as the order.[37] The Plan and current Exchange rules permit the acceptance of orders priced to execute at the midpoint of the NBBO to be ranked and accepted in increments of less than $0.05.[38] Consistent with previous guidance issued by the Participants,[39] the Exchange proposes to amend the operation of Mid-Point Peg Orders to explicitly state that Mid-Point Peg Orders in Pilot Securities may not be entered in increments other than $0.05. The System will execute a Mid-Point Peg Order: (i) In $0.05 increments priced better than the midpoint of the NBBO; or (ii) at the midpoint of the NBBO, regardless of whether the midpoint of the NBBO is in an increment of $0.05. In order to comply with the minimum quoting and trading increments of the Plan and reduce unnecessary System complexity, a Mid-Point Peg Order will not be permitted to alternatively peg to one minimum price variation inside the same side of the NBBO as the order in Pilot Securities. The Exchange believes that the current de minimis usage of the alternative pegging functionality in Pilot Securities does not justify the complexity and risk that would be created by re-programming the System to support this functionality under the Plan.

Discretionary Orders

The Exchange proposes to not accept Discretionary Orders in all Test Groups, including the Control Group, to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities. In sum, a Discretionary Order is a Limit Order with a displayed or non-displayed ranked price and size and an additional non-displayed "discretionary price".[40] The discretionary price is a non-displayed upward offset at which a User is willing to buy, if necessary, or a non-displayed downward offset at which a User is willing to sell, if necessary. The System changes necessary for a Discretionary Order to comply with the Plan become increasingly complex because both the

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order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BYX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. *See* Exchange Rule 11.9(c)(6). A Partial Post Only at Limit Order will remove liquidity from the BYX Book up to the full size of the order if, at the time of receipt, it can be executed at prices better than its limit price. *See* Exchange Rule 11.9(c)(7).

[33] The Exchange notes that a BYX Post Only will, in most cases, remove liquidity from the BYX Book because under its current taker-maker pricing structure, the remover of liquidity is provided a rebate while the provider of liquidity is charged a fee. Therefore, in most cases, value of the execution to remove liquidity will equal or exceed the value of such execution once posted to the BYX Book, including the applicable fees charged or rebates received.

[34] The term "BYX Book" is defined as the "System's electronic file of orders." *See* Exchange Rule 1.5(e).

[35] A Trade-at ISO is a Limit Order for a Pilot Security that meets the following requirements: (i) when routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. *See* Exchange Rule 11.27(a)(7)(A)(i). These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. *Id.*

[36] *See* Exchange Rule 11.11.

[37] *See* Exchange Rule 11.9(c)(9).

[38] *See* Sections VI(B), (C), and (D) of the Plan. *See also* Exchange Rules 11.27(a)(4), (a)(5), and (a)(6).

[39] *See e.g.,* Question 42 of the *Tick Size Pilot Program Trading and Quoting FAQs available at http://www.finra.org/sites/default/files/TSPP-Trading-and-Quoting-FAQs.pdf*

[40] *See* Exchange Rule 11.9(c)(10).

displayed price and discretionary price must comply with the Plan's minimum quoting and trading increments as well as the Trade-at restriction in Test Group Three. In addition, Users do not currently set discretionary prices less than $0.05 away from the order's displayed price and the Exchange does not anticipate Users doing so under the Plan. To date, Discretionary Orders are rarely entered in Pilot Securities and the Exchange anticipates their usage to further decrease due to the Plan's minimum quoting increments. The Exchange believes that the current extremely limited usage of Discretionary Orders in Pilot Securities does not justify the additional System complexity that would be created by supporting Discretionary Orders. As a result of these factors the Exchange proposes to not accept Discretionary Orders in all Test Groups and the Control Group.

Non-Displayed Orders

The Exchange proposes to re-price to the midpoint of the NBBO Non-Displayed Orders in Test Group Three that are priced in a permissible increment better than the midpoint of the NBBO. A Non-Displayed Order is a Market or Limit Order that is not displayed on the Exchange.[41] Exchange Rule 11.27(a)(6)(D) incorporates the Trade-at Prohibition in the Exchange's rules. The Trade-at Prohibition prevents the execution of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. A Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is a Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. Unless an exception applies, a Non-Displayed Order that is able to execute at the price of the Protected Quotation would not be able to do so in Test Group Three due to the Trade-at Prohibition and the Exchange's priority rule.[42] Furthermore, such aggressively priced orders would not be able to post to the BYX Book at the contra-side Protected Quotation, and re-pricing the order to the midpoint of the NBBO would increase execution opportunities under normal market conditions. However, orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities for Non-Displayed Orders in Test Group Three, the Exchange proposes to re-price to the midpoint of the NBBO Non-Displayed Orders that are priced in a permissible increment better than the midpoint of the NBBO.

Market Maker Peg Orders

A Market Maker Peg Order is a Limit Order that is automatically priced by the System at the Designated Percentage (as defined in Exchange Rule 11.8) away from the then current NBB and NBO, or if no NBB or NBO, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Exchange Rule 11.8(d).[43] Should the above pricing result in a Market Maker Peg Order being priced at an increment other than $0.05, the Exchange proposes to round an order to buy (sell) up (down) to the nearest $0.05 increment in order to comply with the minimum quoting increments of the Plan.

Supplemental Peg Orders

The Exchange proposes to not accept Supplemental Peg Orders in Test Group Three in order to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition. A Supplemental Peg Order is a non-displayed Limit Order that posts to the BYX Book, and thereafter is eligible for execution at the NBB for buy orders and NBO for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price.[44] In sum, Supplemental Peg Orders are only executable at the NBBO against an order that is in the process of being routed away. In such case, the Exchange is not displaying a Protected Quotation and, therefore, the Supplemental Peg Order would be unable to execute in Test Group Three due to the Trade-at Prohibition.[45] Therefore, the Exchange proposes to not accept Supplemental Peg Orders in Test Group Three.

Display-Price Sliding

Under the Display-Price Sliding process, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market, will be ranked at the locking price in the BYX Book and displayed by the System at one minimum price variation (*i.e.*, $0.05) below the current NBO (for bids) or one minimum price variation above the current NBB (for offers).[46] The ranked and displayed prices of an order subject to the Display-Price Sliding process may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO.[47]

As described above, Exchange Rule 11.27(a)(6)(D) sets forth the Trade-at Prohibition, which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. Orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities and qualify for the mid-point exception to the Trade-at Prohibition, the Exchange proposes to rank orders in Test Group Three that are subject to the Display-Price Sliding process at the midpoint of the NBBO in the BYX Book and display such orders one minimum price variation below the current NBO (for bids) or one minimum price variation above the current NBB (for offers).

The Exchange also proposes to cancel orders subject to Display-Price Sliding in Test Group Three that are only to be adjusted once and not multiple times in the event the NBBO widens and a contra-side Non-Displayed Order is resting on the BYX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to the increased minimum quoting increments under the Plan, the Exchange is unable to safely re-price an order subject to single Display-Price Sliding in Test Group Three to the original locking price in such circumstances and doing so would add additional System complexity and risk. As discussed above, the Exchange proposes to rank orders in Test Group Three subject to the Display-Price Sliding process at the midpoint of the NBBO. In the event the NBBO changes such that an order subject to Display-Price Sliding would not lock or cross a Protected Quotation of an external market, the order will receive a new timestamp, and will be displayed at the order's limit price.[48] Due to technological limitations arising from the increased minimum quoting increments under the Plan, however, the Exchange is unable to safely re-program its System to re-price such order to the original locking price when the NBBO widens and a contra-side Non-Displayed Order is resting on the BYX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Therefore, the Exchange proposes to cancel orders subject to the single Display-Price Sliding process in such circumstances. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process.

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[41] *See* Exchange Rule 11.9(c)(11).

[42] Under Exchange Rule 11.12(a)(2), displayed Limit Orders have priority over Non-Displayed Limit Orders.

[43] *See* Exchange Rule 11.9(c)(16).

[44] *See* Exchange Rule 11.9(c)(19).

[45] The Exchange notes that the likelihood of a Supplemental Peg Order qualifying for an exception to the Trade-at Prohibition is small. For example, Supplemental Peg Orders are only executable against orders that are to be routed away and would not be eligible to execute against an incoming ISO or Trade-at ISO. Also, the Exchange would not be displaying a Protected Quotation. In addition, the Exchange does not frequently receive orders of Block Size and, in order to qualify for the Block exception, the contra-side Block Order must be routable and the Supplemental Peg Order be of Block Size.

[46] *See* Exchange Rule 11.9(g)(1)(A).

[47] *See* Exchange Rule 11.9(g)(1)(C).

Ministerial Change

Currently, both Interpretation and Policy .03 to Rule 11.27(a) and Interpretation and Policy .11 to Rule 11.27(b) state that Rule 11.27 shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan). The Exchange proposes to include this language at the beginning of Rule 11.27 and, therefore, proposes to delete both Interpretation and Policy .03 to Rule 11.27(a) and Interpretation and Policy .11 to Rule 11.27(b) as those provisions would be redundant and unnecessary.

Implementation Date

If the Commission approves the proposed rule change, the proposed rule change will be effective upon Commission approval and shall become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[49] in general, and furthers the objectives of Section 6(b)(5) of the Act[50] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The proposed rule change is designed to comply with the Plan, reduce complexity and enhance System resiliency while not adversely affecting the data collected under the Plan. Therefore, the Exchange believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan and, as discussed further below, other applicable regulations.

The Exchange believes that the proposed changes regarding its Retail Price Improvement Program, BYX Market Orders, Mid-Point Peg Orders, Market Maker Peg Orders, and Display-Price Sliding are consistent with the Act because they are intended to modify the Exchange's System to comply with the provisions of the Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that these proposals are intended to comply with the Plan, the Exchange believes that these proposals are in furtherance of the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

The Exchange also believes that its proposed changes to Market Pegged Orders, Discretionary Orders, Non-Displayed Orders, Supplemental Peg Orders, and Display-Price Sliding are also consistent with the Act because they are intended to eliminate unnecessary System complexity and risk based on the de minimis current usage of such order types and instructions in Pilot Securities and/or their limited ability to execute under the Plan's minimum trading and quoting increments or Trade-at Prohibition.[51] For example, during March 2016, the alternative pegging functionality of Mid-Point Peg Orders, Market Pegged Orders, Non-Displayed Orders, and Supplemental Peg Orders accounted for 0.01%, 0.02%, 0.92%, and 0.01%, respectively, of volume in eligible Pilot Securities on the Exchange, BZX, EDGA and EDGX combined. Notably, Discretionary Orders accounted for 0.00% of volume in eligible Pilot Securities on the Exchange, BZX, EDGA and EDGX combined. The Commission adopted Regulation Systems Compliance and Integrity ("Regulation SCI") in November 2014 to strengthen the technology infrastructure of the U.S. securities markets.[52] Regulation SCI is designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission's oversight and enforcement of securities market technology infrastructure.

Regulation SCI required the Exchange to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act. Each of these proposed changes are intended to reduce complexity and risk in the System to ensure the Exchange's technology remains robust and resilient. In determining the scope of the proposed changes, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities.[53] The potential complexity results from code changes for a majority of the Exchange's order types, which requires the implementation and testing of a separate branch of code for each Test Group. For example, the Exchange currently utilizes one branch of code for which to implement and test changes. Development work for the Tick Pilot results in the creation of four additional branches of code that are to be developed and tested (*e.g.*, Control Group + three Test Groups). The Exchange determined that the changes proposed herein are necessary to ensure continued System resiliency in accordance with the requirements of Regulation SCI. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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[48] *Id.*

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(5).

[51] The Commission has also expressed concern regarding potential market instability caused by technological risks. *See e.g.*, Chair Mary Jo White, Commission, *Enhancing Our Equity Market Structure* (June 5, 2014) *available at https://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y.*

[52] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) ("Regulation SCI Approval Order").

[53] But for the Plan, the Exchange notes that it would not have proposed to amend the operation of Market Pegged Orders, Discretionary Orders, Non-Displayed Orders, Supplemental Peg Orders, and Display-Price Sliding as described herein.

In addition, each of these proposed changes would have a de minimis to zero impact on the data reported pursuant to the Plan. As evidenced above, Market Pegged Orders, Discretionary Orders, the alternative pegging functionality of Mid-Point Peg Orders, and Supplemental Peg Orders are infrequently used in Pilot Securities or the execution of such orders would be scarce due to the Plan's minimum trading and quoting requirement and Trade-at Prohibition. The limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan. Therefore, the Exchange believes each proposed change is a reasonable means to ensure that the System's integrity, resiliency, and availability continues to promote the maintenance of fair and orderly markets. Due to the additional complexity, limited usage and execution opportunities, the Exchange believes it is not unfairly discriminatory to apply the changes proposed herein to only Pilot Securities as such changes are necessary to reduce complexity and ensure continued System resiliency in accordance with the requirements of Regulation SCI. The Exchange also believes the proposed changes to Non-Displayed Orders, and orders subject to the Display-Price Sliding process in Test Group Three are consistent with the Act because they are designed to increase the execution opportunities for such order types in compliance with the mid-point exception to the Trade-at Prohibition. The Exchange also believes the proposed change to Market Pegged Orders in Test Groups One and Two is consistent with the Act because it is identical to the operation of the Super Aggressive instruction under Exchange Rule 11.13(b)(4)(C). The Exchange notes that Market Pegged Orders are aggressive by nature and believes executing the order in such circumstance is reasonable and appropriate.

The Exchange also believes it is reasonable and appropriate to cancel an order subject to the single Display-Price Sliding process in Test Group Three in the event that the NBBO widens and a contra-side Non-Displayed Order is resting on the BYX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to technological limitations and the Plan's increased minimum quoting increments, the Exchange is unable to safely re-program its System to re-price such orders to the original locking price in such circumstances. The Exchange also anticipates that the scenario under which it proposes to cancel the Display-Price Sliding order will be infrequent in Tick Pilot Securities. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process. Therefore, the Exchange believes it is consistent with the Act to set forth this scenario in its rules so that Users will understand how the System operates and how their orders would be handled in this discrete scenario.

Lastly, the Exchange believes the ministerial changes to Rule 11.27 are also consistent with the Act as they would: (i) Clarify a provision under paragraph (a)(4); and (ii) remove redundant provisions from the rule.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan, reduce System complexity and enhance resiliency. The Exchange also notes that the proposed rule change will apply equally to all Members that trade Pilot Securities.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. In particular, the Commission seeks comment on the issue described below.

In the Approval Order, the Commission stressed the importance of testing the impact of wider tick sizes on the trading and liquidity of the securities of small capitalization companies, and doing so in a way that produces robust results that inform future policy decisions.[54] The Commission acknowledged the complexity of the Pilot and the costs that its implementation would create for market participants, but concluded that the benefits of the empirical data that would be produced by the Pilot warranted incurring those costs.[55] As a result, the Plan requires that each Participant, including the Exchange, adopt rules that are necessary for compliance with the provisions of the Plan.[56]

While the Exchange states that the proposed rule change describes the system changes necessary to implement the Pilot, the Commission notes that the scope of the proposed changes extends beyond those required for compliance with the Plan, and would eliminate certain order types for Pilot Securities during the Pilot Period, or modify their operation in ways not required by the Plan. For example, the Exchange proposes not to accept Market Pegged Orders, Discretionary Orders, and Supplemental Peg Orders, and certain types of Mid-Point Peg Orders, in some or all Test Groups of Pilot Securities for the duration of the Pilot Period.[57] These proposals appear designed to permit the Exchange to avoid the costs of modifying these order types to comply with the Plan. The Exchange notes that these order types are infrequently used in Pilot Securities, and takes the position that "[t]he limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan." [58] At the same time, the Exchange also does not appear prepared to propose to eliminate these order types indefinitely. By contrast, the Exchange proposes to modify, in ways not required by the

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[54] *See* Approval Order, *supra* note 4, at 80 FR 27515.

[55] *Id* at 27516.

[56] *See* Sections II(B) of the Plan. *See also* Section IV of the Plan.

[57] The Exchange also proposes to cancel certain orders subject to the Display-Price Sliding process in certain Pilot Securities for the duration of the Pilot Period.

[58] *See supra* Item II.A.2.

Plan, the operation of Market Pegged Orders and Non-Displayed Orders, and certain orders subject to the Display-Price Sliding process, in some or all Test Groups of Pilot Securities, and to incur the associated system change costs, in order to increase the "execution opportunities" for these order types for the duration of the Pilot Period.[59]

The Commission is concerned that proposed rule changes, other than those necessary for compliance with Plan, that are targeted at Pilot Securities, that have a disparate impact on different Test Groups and the Control Group, and that are to apply temporarily only for the Pilot Period, could bias the results of the Pilot and undermine the value of the data generated in informing future policy decisions. Accordingly, the Commission is concerned that the proposed rule change may not be consistent with Act, including Section 6(b)(5) thereof and Rule 608 of Regulation NMS, or with the Plan.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BatsBYX–2016–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBYX–2016–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBYX–2016–17 and should be submitted on or before August 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17092 Filed 7–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78331; File No. SR–BatsEDGX–2016–26]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Paragraph (c) to Exchange Rule 11.22 To Describe Changes to System Functionality Necessary To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

July 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt paragraph (c) to Exchange Rule 11.22 to describe changes to System[3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan" or "Pilot").[4] In determining the scope of the proposed changes to implement the Pilot,[5] the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, Bats BYX Exchange, Inc. ("BYX"), Chicago Stock Exchange, Inc., Bats BZX Exchange, Inc. ("BZX"), Bats EDGA Exchange, Inc. ("EDGA"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program.[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

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[59] *See supra* Item II.A.1–2.

[60] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "System" is defined as the "electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(cc).

[4] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[5] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan.

[6] 15 U.S.C. 78k–1.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a Control Group of approximately 1400 Pilot Securities and three Test Groups with 400 Pilot Securities in each Test Group selected by a stratified sampling.[10] During the Pilot, Pilot Securities in the Control Group will be quoted and traded at the currently permissible increments. Pilot Securities in the first Test Group (“Test Group One”) will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second Test Group (“Test Group Two”) will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[12] Pilot Securities in the third Test Group (“Test Group Three”) will be subject to the same restrictions as Test Group Two and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at a price of a Trading Center’s [13] “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.[14] The same exceptions provided under Test Group Two will also be available under the Trade-at Prohibition, with an additional exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS.[15]

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraph (a) of Rule 11.22 to require Members [16] to comply with the quoting and trading provisions of the Plan.[17] The Exchange also adopted paragraph (b) of Rule 11.22 to require Members to comply with the data collection provisions under Appendix B and C of the Plan.[18]

Proposed System Changes

The Exchange proposes to adopt paragraph (c) of Exchange Rule 11.22 to describe changes to System functionality necessary to implement the Plan. Paragraph (c) of Rule 11.22 would set forth the Exchange’s specific procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities. Unless otherwise indicated, paragraph (c) of Rule 11.22 would apply to order types and order type instructions in Pilot Securities in Test Groups One, Two, and Three and not to orders in Pilot Securities included in the Control Group. The proposed changes include select and discrete amendments to the operation of: (i) Market Orders; (ii) orders with a Market Peg instruction; (iii) MidPoint Peg Orders; (iii) orders with a Discretionary Range; (iv) orders with a Non-Displayed instruction; (v) Market Maker Peg Orders; (vi) Supplemental Peg Orders; and (vii) orders subject to the Display-Price Sliding process.

In determining the scope of these proposed changes to implement the Plan, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities. These proposed changes are designed to directly comply with the Plan and to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. As discussed below, certain of these changes are also intended to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage of certain order types in Pilot Securities and/or their limited ability to execute under the Trade-at Prohibition. Therefore, the Exchange firmly believes that these changes will have little or no impact on the operation and data collection elements of the Plan. The Exchange further believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.

Market Orders

A Market Order is an order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange.[19] Market Orders shall not trade through Protected Quotations. Any portion of a Market Order that would execute at a price more than $0.50 or 5 percent worse than the NBBO at the time the order initially reaches the Exchange, whichever is greater, will be cancelled.[20] In order to comply with the minimum quoting increments set forth in the Plan, the Exchange proposes to state under proposed Rule 11.22(c)(1) that for purposes of determining whether a Market Order’s execution price is more than 5 percent worse than the NBBO under Rule 11.8(a)(7), the execution price for a buy (sell) order will be rounded down (up) to the nearest $0.05 increment.

Market Peg Instruction

The Exchange proposes to amend the operation of orders with a Market Peg instruction to reduce risk in its System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition in Test Group Three. An order with a Pegged instruction is automatically adjusted by the System in response to changes in the NBBO and will peg to the NBB or NBO or a certain amount away from the NBB or NBO.[21] An order with a Market Peg instruction is pegged to the contra-side NBBO.[22] A User [23] entering an order with a Market Peg instruction can specify that such order's price will offset the inside quote on the contra-side of the market by an amount (the "Offset") set by the User. An order with a Market Peg instruction is not eligible to be displayed on the Exchange.

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[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] *See* Approval Order, *supra* note 4.

[10] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[11] *See* Section VI(B) of the Plan.

[12] *See* Section VI(C) of the Plan.

[13] The Plan incorporates the definition of “Trading Center” from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a Trading Center as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.”

[14] *See* Section VI(D) of the Plan.

[15] 17 CFR 242.611.

[16] The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” *See* Exchange Rule 1.5(n).

[17] *See* Securities Exchange Act Release No. 77791 (May 10, 2016), 81 FR 30375 (May 16, 2016) (SR–BatsEDGX–2016–14).

[18] *See* Securities Exchange Act Release No. 77416 (March 22, 2016), 81 FR 17225 (March 28, 2016) (SR–BatsEDGX–2016–01).

[19] *See* Exchange Rule 11.8(a).

[20] *Id.*

[21] *See* Exchange Rule 11.6(j).

[22] *See* Exchange Rule 11.6(j)(1).

[23] A “User” is defined as any member or sponsored participant of the Exchange who is authorized to obtain access to the System pursuant to Rule 11.3. *See* Exchange Rule 1.5(ee).

In Test Groups One and Two, the Exchange proposes to modify the behavior of an order with a Market Peg instruction when it is locked by an incoming order with a Post Only instruction [24] that does not remove liquidity pursuant to Rule 11.6(n)(4).[25] In such case, the order with a Market Peg instruction would be converted to an executable order and will remove liquidity against such incoming order. In no case would an order with a Market Peg instruction execute against an incoming order with a Post Only instruction if an order with higher priority is on the EDGX Book.[26] Specifically, if an order other than an order with a Market Peg instruction maintains higher priority than one or more orders with a Market Peg instruction, the order(s) with a Market Peg instruction with lower priority will not be converted, as described above, and the incoming order with a Post Only instruction will be posted or cancelled in accordance with Rule 11.6(n)(4).

The Exchange notes that orders with a Market Peg instruction are aggressive by nature and believes executing the order in such circumstance is appropriate. The Exchange also notes that the proposed behavior for orders with a Market Peg instruction in Test Groups One and Two is identical to the operation of orders with the Super Aggressive Routing instruction under Exchange Rule 11.6(n)(2). When an order with a Super Aggressive instruction is locked by an incoming order with a Post Only instruction that does not remove liquidity pursuant to Rule 11.6(n)(4), the order is converted to an executable order and will remove liquidity against such incoming order. In addition, like as proposed above, in no case would an order with a Super Aggressive instruction execute against an incoming order with a Post Only instruction if an order with higher priority is on the EDGX Book. The Exchange believes this change is reasonable and appropriate due to the limited usage of orders with a Market Peg instruction in Pilot Securities, to avoid unnecessary additional System complexity, and to ensure the order with a Market Peg instruction may execute in such circumstance.

The Exchange also proposes to not accept orders with a Market Peg instruction in Test Group Three based on limited current usage, additional System complexity, and their limited ability to execute under the Trade-at Prohibition. Exchange Rule 11.22(a)(6)(D) sets forth the "Trade-at Prohibition," which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours,[27] unless an enumerated exception applies.[28] The Exchange believes that their de minimis usage and limited ability to execute due to the Trade-at Prohibition does not justify the complexity that would be created by supporting orders with a Market Peg instruction in Test Group Three. A vast majority of orders with a Market Pegged instruction are entered into the System with a zero Offset and, therefore, create a locked market with the contra-side NBBO. Under the Trade-at Prohibition, an order with a Market Peg instruction would not be eligible for execution at the locking price, including when a Trade-at Intermarket Sweep Order ("ISO") [29] is entered, because of non-cleared contra-side Protected Quotations. For example, assume the NBBO is $10.00 (NYSE) × $10.05 (Nasdaq) in a Test Group 3 security. An order with a Market Peg instruction to buy at $10.10 with a zero Offset is entered on the Exchange. The order would be ranked and hidden on the EDGX Book at $10.05. A Trade-at ISO to sell at $10.05 is then entered. In this example, no execution occurs on the Exchange because Nasdaq is displaying an order to sell at $10.05. The Trade-at ISO instruction only indicates that all of the better and equal priced buy orders have been cleared. It does not indicate that the seller has cleared any Protected Offers. Therefore, the Exchange proposes to not accept orders with a Market Peg instruction in Test Group Three in an effort to reduce unnecessary System complexity, avoid an internally locked book, and due to the limited execution opportunities for orders with a Market Peg instruction due to the Trade-at Prohibition.

MidPoint Peg Orders

A MidPoint Peg Order is an order whose price is automatically adjusted by the System in response to changes in the NBBO to be pegged to the midpoint of the NBBO, or, alternatively, pegged to the less aggressive of the midpoint of the NBBO or one Minimum Price Variation [30] inside the same side of the NBBO as the order.[31] The Plan and current Exchange rules permit the acceptance of orders priced to execute at the midpoint of the NBBO to be ranked and accepted in increments of less than $0.05.[32] Consistent with previous guidance issued by the Participants,[33] the Exchange proposes to amend the operation of MidPoint Peg Orders to explicitly state that MidPoint Peg Orders in Pilot Securities may not be entered in increments other than $0.05. The System will execute a MidPoint Peg Order: (i) In $0.05 increments priced better than the midpoint of the NBBO; or (ii) at the midpoint of the NBBO, regardless of whether the midpoint of the NBBO is in an increment of $0.05. In order to comply with the minimum quoting and trading increments of the Plan and reduce unnecessary System complexity, a MidPoint Peg Order will not be permitted to alternatively peg to one Minimum Price Variation inside the same side of the NBBO as the order in Pilot Securities. The Exchange believes that the current de minimis usage of the alternative pegging functionality in Pilot Securities does not justify the complexity and risk that would be created by re-programming the System to support this functionality under the Plan.

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[24] *See* Exchange Rule 11.6(n)(4).

[25] A Post Only Order will remove contra-side liquidity from the EDGX Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. *See* Exchange Rule 11.6(n)(4).

[26] The term "EDGX Book" is defined as the "System's electronic file of orders." *See* Exchange Rule 1.5(d).

[27] The term "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." *See* Exchange Rule 1.5(y).

[28] *See also* Section VI(D) of the Plan.

[29] A Trade-at ISO is a Limit Order for a Pilot Security that meets the following requirements: (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. *See* Exchange Rule 11.22(a)(7)(A)(i). These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. *Id.*

[30] *See* Exchange Rule 11.6(i).

[31] *See* Exchange Rule 11.8(d).

[32] *See* Sections VI(B), (C), and (D) of the Plan. *See also* Exchange Rules 11.22(a)(4), (a)(5), and (a)(6).

[33] *See e.g.*, Question 42 of the *Tick Size Pilot Program Trading and Quoting FAQs available at http://www.finra.org/sites/default/files/TSPP-Trading-and-Quoting-FAQs.pdf.*

Discretionary Range Instruction

The Exchange proposes to not accept orders with a Discretionary Range in all Test Groups, including the Control Group, to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities. In sum, an order with a Discretionary Range has a displayed or non-displayed ranked price and size and an additional non-displayed "discretionary price".[34] The discretionary price is a non-displayed upward offset at which a User is willing to buy, if necessary, or a non-displayed downward offset at which a User is willing to sell, if necessary. The System changes necessary for orders with a Discretionary Range to comply with the Plan become increasingly complex because both the displayed price and discretionary price must comply with the Plan's minimum quoting and trading increments as well as the Trade-at restriction in Test Group Three. In addition, Users do not currently set discretionary prices less than $0.05 away from the order's displayed price and the Exchange does not anticipate Users doing so under the Plan. To date, orders with a Discretionary Range are rarely entered in Pilot Securities and the Exchange anticipates their usage to further decrease due to the Plan's minimum quoting increments. The Exchange believes that the current extremely limited usage of orders with a Discretionary Range in Pilot Securities does not justify the additional System complexity that would be created by supporting such orders. As a result of these factors the Exchange proposes to not accept orders with a Discretionary Range in all Test Groups and the Control Group.

Non-Displayed Instruction

The Exchange proposes to re-price to the midpoint of the NBBO orders with a Non-Displayed instruction in Test Group Three that are priced in a permissible increment better than the midpoint of the NBBO. An order with a Non-Displayed instruction is not displayed on the Exchange.[35] Exchange Rule 11.22(a)(6)(D) incorporates the "Trade-at Prohibition" in the Exchange's rules. The Trade-at Prohibition prevents the execution of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. A Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is a Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. Unless an exception applies, an order with a Non-Displayed instruction that is able to execute at the price of the Protected Quotation would not be able to do so in Test Group Three due to the Trade-at Prohibition and the Exchange's priority rule.[36] Furthermore, such aggressively priced orders would not be able to post to the EDGX Book at the contra-side Protected Quotation, and re-pricing the order to the midpoint of the NBBO would increase execution opportunities under normal market conditions. However, orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities for orders with a Non-Displayed instruction in Test Group Three, the Exchange proposes to re-price to the midpoint of the NBBO orders with a Non-Displayed instruction that are priced in a permissible increment better than the midpoint of the NBBO.

Market Maker Peg Orders

A Market Maker Peg Order is a Limit Order that is automatically priced by the System at the Designated Percentage (as defined in Exchange Rule 11.20(d)(2)(D)) away from the then current NBB and NBO, or if no NBB or NBO, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Exchange Rule 11.20(d).[37] Should the above pricing result in a Market Maker Peg Order being priced at an increment other than $0.05, the Exchange proposes to round an order to buy (sell) up (down) to the nearest $0.05 increment in order to comply with the minimum quoting increments of the Plan.

Supplemental Peg Orders

The Exchange proposes to not accept Supplemental Peg Orders in Test Group Three in order to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition. A Supplemental Peg Order is a non-displayed Limit Order that posts to the EDGX Book, and thereafter is eligible for execution at the NBB for buy orders and NBO for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price.[38] In sum, Supplemental Peg Orders are only executable at the NBBO against an order that is in the process of being routed away. In such case, the Exchange is not displaying a Protected Quotation and, therefore, the Supplemental Peg Order would be unable to execute in Test Group Three due to the Trade-at Prohibition.[39] Therefore, the Exchange proposes to not accept Supplemental Peg Orders in Test Group Three.

Display-Price Sliding

Under the Display-Price Sliding process, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market, will be ranked at the locking price in the EDGX Book and displayed by the System at one minimum price variation (*i.e.*, $0.05) below the current NBO (for bids) or one minimum price variation above the current NBB (for offers).[40] The ranked and displayed prices of an order subject to the Display-Price Sliding process may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO.[41]

As described above, Exchange Rule 11.22(a)(6)(D) sets forth the Trade-at Prohibition, which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. Orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities and qualify for the midpoint exception to the Trade-at Prohibition, the Exchange proposes to rank orders in Test Group Three that are subject to the Display-Price Sliding process at the midpoint of the NBBO in the BZX Book and display such orders one minimum price variation below the current NBO (for bids) or one minimum price variation above the current NBB (for offers).

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[34] *See* Exchange Rule 11.6(d).

[35] *See* Exchange Rule 11.6(e)(2).

[36] Under Exchange Rule 11.9(a)(2)(A), displayed Limit Orders have priority over non-displayed Limit Orders.

[37] *See* Exchange Rule 11.8(e).

[38] *See* Exchange Rule 11.8(f).

[39] The Exchange notes that the likelihood of a Supplemental Peg Order qualifying for an exception to the Trade-at Prohibition is small. For example, Supplemental Peg Orders are only executable against orders that are to be routed away and would not be eligible to execute against an incoming ISO or Trade-at ISO. Also, the Exchange would not be displaying a Protected Quotation. In addition, the Exchange does not frequently receive orders of Block Size and, in order to qualify for the Block exception, the contra-side Block Order must be routable and the Supplemental Peg Order be of Block Size.

[40] *See* Exchange Rule 11.6(l)(1)(B).

[41] *See* Exchange Rule 11.6(l)(1)(B)(iii).

The Exchange also proposes to cancel orders subject to Display-Price Sliding in Test Group Three that are only to be adjusted once and not multiple times in the event the NBBO widens and a contra-side order with a Non-Displayed instruction is resting on the EDGX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to the increased minimum quoting increments under the Plan, the Exchange is unable to safely re-price an order subject to single Display-Price Sliding in Test Group Three to the original locking price in such circumstances and doing so would add additional System complexity and risk. As discussed above, the Exchange proposes to rank orders in Test Group Three subject to the Display-Price Sliding process at the midpoint of the NBBO. In the event the NBBO changes such that an order subject to Display-Price Sliding would not lock or cross a Protected Quotation of an external market, the order will receive a new timestamp, and will be displayed at the order's limit price.[42] Due to technological limitations arising from the increased minimum quoting increments under the Plan, however, the Exchange is unable to safely re-program its System to re-price such order to the original locking price when the NBBO widens and a contra-side order with a Non-Displayed instruction is resting on the EDGX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Therefore, the Exchange proposes to cancel orders subject to the single Display-Price Sliding process in such circumstances. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process.

Ministerial Change

Currently, both Interpretation and Policy .03 to Rule 11.22(a) and Interpretation and Policy .11 to Rule 11.22(b) state that Rule 11.22 shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan). The Exchange proposes to include this language at the beginning of Rule 11.22 and, therefore, proposes to delete both Interpretation and Policy .03 to Rule 11.22(a) and Interpretation and Policy .11 to Rule 11.22(b) as those provisions would be redundant and unnecessary. The Exchange also proposes to amend the last sentence of Rule 11.22(a)(4) to specify that the current permissible price increments are set forth under Exchange Rule 11.6(i), Minimum Price Variation.

Implementation Date

If the Commission approves the proposed rule change, the proposed rule change will be effective upon Commission approval and shall become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[43] in general, and furthers the objectives of Section 6(b)(5) of the Act[44] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The proposed rule change is designed to comply with the Plan, reduce complexity and enhance System resiliency while not adversely affecting the data collected under the Plan. Therefore, the Exchange believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan and, as discussed further below, other applicable regulations.

The Exchange believes that the proposed changes regarding Market Orders, MidPoint Peg Orders, Market Maker Peg Orders, and Display-Price Sliding are consistent with the Act because they are intended to modify the Exchange's System to comply with the provisions of the Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that these proposals are intended to comply with the Plan, the Exchange believes that these proposals are in furtherance of the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

The Exchange also believes that its proposed changes to orders with a Market Peg instruction, orders with a Discretionary Range, orders with a Non-Displayed instruction, Supplemental Peg Orders, and Display-Price Sliding are also consistent with the Act because they are intended to eliminate unnecessary System complexity and risk based on the de minimis current usage of such order types and instructions in Pilot Securities and/or their limited ability to execute under the Plan's minimum trading and quoting increments or Trade-at Prohibition.[45] For example, during March 2016, the alternative pegging functionality of MidPoint Peg Orders, orders with a Market Peg instruction, orders with a Non-Displayed instruction, and Supplemental Peg Orders accounted for 0.01%, 0.02%, 0.92%, and 0.01%, respectively, of volume in eligible Pilot Securities on the Exchange, BYX, BZX and EDGA combined. Notably, orders with a Discretionary Range accounted for 0.00% of volume in eligible Pilot Securities on the Exchange, BYX, BZX and EDGA combined.

The Commission adopted Regulation Systems Compliance and Integrity ("Regulation SCI") in November 2014 to strengthen the technology infrastructure of the U.S. securities markets.[46] Regulation SCI is designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission's oversight and enforcement of securities market technology infrastructure. Regulation SCI required the Exchange to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act. Each of these proposed changes are intended to reduce complexity and risk in the System to ensure the Exchange's technology remains robust and resilient. In determining the scope of the proposed changes, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities.[47] The potential complexity results from code changes for a majority of the Exchange's order types, which requires the implementation and testing of a separate branch of code for each Test Group. For example, the Exchange currently utilizes one branch of code for which to implement and test changes. Development work for the Pilot results in the creation of four additional branches of code that are to be developed and tested (*e.g.*, Control Group + three Test Groups). The Exchange determined that the changes proposed herein are necessary to ensure continued System resiliency in accordance with the requirements of Regulation SCI. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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[42] *Id.*

[43] 15 U.S.C. 78f(b).

[44] 15 U.S.C. 78f(b)(5).

[45] The Commission has also expressed concern regarding potential market instability caused by technological risks. *See e.g.*, Chair Mary Jo White, Commission, *Enhancing Our Equity Market Structure* (June 5, 2014) *available at https://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y.*

[46] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) ("Regulation SCI Approval Order").

In addition, each of these proposed changes would have a de minimis to zero impact on the data reported pursuant to the Plan. As evidenced above, orders with a Market Peg instruction, orders with a Discretionary Range, the alternative pegging functionality of MidPoint Peg Orders, and Supplemental Peg Orders are infrequently used in Pilot Securities or the execution of such orders would be scarce due to the Plan's minimum trading and quoting requirement and Trade-at Prohibition. The limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan. Therefore, the Exchange believes each proposed change is a reasonable means to ensure that the System's integrity, resiliency, and availability continues to promote the maintenance of fair and orderly markets. Due to the additional complexity, limited usage and execution opportunities, the Exchange believes it is not unfairly discriminatory to apply the changes proposed herein to only Pilot Securities as such changes are necessary to reduce complexity and ensure continued System resiliency in accordance with the requirements of Regulation SCI. The Exchange also believes the proposed changes to orders with a Non-Displayed instruction, and orders subject to the Display-Price Sliding process in Test Group Three are consistent with the Act because they are designed to increase the execution opportunities for such order types in compliance with the mid-point exception to the Trade-at Prohibition. The Exchange also believes the proposed change to Market Pegged Orders in Test Groups One and Two is consistent with the Act because it is identical to the operation of the Super Aggressive instruction under Exchange Rule 11.6(n)(2). The Exchange notes that Market Pegged Orders are aggressive by nature and believes executing the order in such circumstance is reasonable and appropriate.

The Exchange also believes it is reasonable and appropriate to cancel an order subject to the single Display-Price Sliding process in Test Group Three in the event that the NBBO widens and a contra-side order with a Non-Displayed instruction is resting on the EDGX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to technological limitations and the Plan's increased minimum quoting increments, the Exchange is unable to safely re-program its System to re-price such orders to the original locking price in such circumstances. The Exchange also anticipates that the scenario under which it proposes to cancel the Display-Price Sliding order will be infrequent in Tick Pilot Securities. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process. Therefore, the Exchange believes it is consistent with the Act to set forth this scenario in its rules so that Users will understand how the System operates and how their orders would be handled in this discrete scenario.

Lastly, the Exchange believes the ministerial changes to Rule 11.22 are also consistent with the Act as they would: (i) Clarify a provision under paragraph (a)(4); and (ii) remove redundant provisions from the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan, reduce System complexity and enhance resiliency. The Exchange also notes that the proposed rule change will apply equally to all Members that trade Pilot Securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on the issue described below.

In the Approval Order, the Commission stressed the importance of testing the impact of wider tick sizes on the trading and liquidity of the securities of small capitalization companies, and doing so in a way that produces robust results that inform future policy decisions.[48] The Commission acknowledged the complexity of the Pilot and the costs that its implementation would create for market participants, but concluded that the benefits of the empirical data that would be produced by the Pilot warranted incurring those costs.[49] As a result, the Plan requires that each Participant, including the Exchange, adopt rules that are necessary for compliance with the provisions of the Plan.[50]

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[47] But for the Plan, the Exchange notes that it would not have proposed to amend the operation of orders with a Market Peg instruction, orders with a Discretionary Range, orders with a Non-Displayed instruction, Supplemental Peg Orders, and Display-Price Sliding as described herein.

[48] *See* Approval Order, *supra* note 4, at 80 FR 27515.

[49] *Id.* at 27516.

[50] *See* Section II(B) of the Plan. *See* also Section IV of the Plan.

While the Exchange states that the proposed rule change describes the system changes necessary to implement the Pilot, the Commission notes that the scope of the proposed changes extends beyond those required for compliance with the Plan, and would eliminate certain order types for Pilot Securities during the Pilot Period, or modify their operation in ways not required by the Plan. For example, the Exchange proposes not to accept Market Pegged Orders, Discretionary Orders, and Supplemental Peg Orders, and certain types of Mid-Point Peg Orders, in some or all Test Groups of Pilot Securities for the duration of the Pilot Period.[51] These proposals appear designed to permit the Exchange to avoid the costs of modifying these order types to comply with the Plan. The Exchange notes that these order types are infrequently used in Pilot Securities, and takes the position that "[t]he limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan." [52] At the same time, the Exchange also does not appear prepared to propose to eliminate these order types indefinitely. By contrast, the Exchange proposes to modify, in ways not required by the Plan, the operation of Market Pegged Orders and Non-Displayed Orders, and certain orders subject to the Display-Price Sliding process, in some or all Test Groups of Pilot Securities, and to incur the associated system change costs, in order to increase the "execution opportunities" for these order types for the duration of the Pilot Period.[53]

The Commission is concerned that proposed rule changes, other than those necessary for compliance with Plan, that are targeted at Pilot Securities, that have a disparate impact on different Test Groups and the Control Group, and that are to apply temporarily only for the Pilot Period, could bias the results of the Pilot and undermine the value of the data generated in informing future policy decisions. Accordingly, the Commission is concerned that the proposed rule change may not be consistent with Act, including Section 6(b)(5) thereof and Rule 608 of Regulation NMS, or with the Plan.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsEDGX–2016–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–26, and should be submitted on or before August 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17091 Filed 7–19–16; 8:45 am]

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[51] The Exchange also proposes to cancel certain orders subject to the Display-Price Sliding process in certain Pilot Securities for the duration of the Pilot Period.

[52] *See supra* Item II.A.2.

[53] *See supra* Item II.A.1–2.

[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78323; File No. SR–MSRB–2016–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Establish the MSRB Academic Historical Transaction Data Product

July 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2016, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to the MSRB's facility for the Real-Time Transaction Reporting System ("RTRS") to establish an historical data product to provide institutions of higher education ("academic institutions") with post-trade municipal securities transaction data collected through RTRS ("MSRB Academic Historical Transaction Data Product," hereafter referred to as "RTRS Academic Data Product") for purchase ("proposed rule change"). If approved by the Commission, the MSRB will announce the effective date of the proposed rule change in a regulatory notice to be published no later than 90 days following Commission approval. The effective date will be no later than 270 days following publication of the regulatory notice announcing Commission approval.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(i).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB is the federal regulatory entity with primary responsibility under the Exchange Act for rulemaking for the municipal securities market. Under the Exchange Act, the MSRB is charged with adopting rules with respect to transactions in municipal securities effected by brokers, dealers and municipal securities dealers ("dealers") and the municipal advisory activities of municipal advisors.

In addition to developing its comprehensive body of rules governing the activities of dealers and municipal advisors, the MSRB has undertaken to create various market transparency products in furtherance of its statutory duties and its mission, which is, in part, to promote a fair and efficient municipal securities market through the collection and dissemination of market information. Historically, the MSRB has operated information systems to collect key disclosure documents and transaction data to create a central warehouse of information that made most of these documents and data available to the market—the Electronic Municipal Market Access ("EMMA®")[3] Web site. The MSRB makes post-trade transaction data available to the general public through the EMMA Web site at no cost, and to data vendors, industry utilities and others on a subscription basis through a real-time data feed and on a delayed basis.

MSRB Rule G–14, on transaction reporting, requires dealers to report all executed transactions in municipal securities to RTRS within 15 minutes of the time of trade, with limited exceptions.[4] RTRS serves the dual objectives of price transparency and market surveillance. While a comprehensive database of transactions is needed for the surveillance function of RTRS, the MSRB does not believe that all information or transactions reported to RTRS are necessary to serve the transparency objective of the system and, therefore, such information does not qualify for public dissemination. Among other information, the executing broker symbol, which provides the identity of each dealer that executed a transaction reported to RTRS, is not publicly disseminated. The information facility for RTRS serves to outline the high-level parameters by which the MSRB operates the system.

While currently used by researchers from academic institutions ("academics"), through subscription services or in historical data sets, the RTRS data available on the EMMA Web site do not include any identifying information regarding the dealer reporting each transaction. Thus, the information disseminated from RTRS would not allow such an academic to attribute transactions to the dealers that facilitated them—even anonymously. As a result, some academics have asked whether the MSRB could make an enhanced version of RTRS trade data available that includes dealer identifiers. Further, on July 15, 2014, the MSRB published a Report on Secondary Market Trading in the Municipal Securities Market that utilized dealer identifiers to gain a better understanding of secondary market trading practices in the municipal securities market, including basic patterns of trading, pricing differentials associated with trading patterns and the impact of price transparency on pricing differentials. However, academics wishing to replicate the methodology employed in this report are unable to do so, as it relies, in part, on dealer identifiers.

In July 2015, in response to these requests from academics, the MSRB published a request for comment, proposing to create a new RTRS Academic Data Product that would include anonymized dealer identifiers ("draft proposal").[5] In response to the Request for Comment, the MSRB received 13 comment letters, mostly supporting the draft proposal.[6] After carefully considering all of the comments received, the MSRB determined to file this proposed rule change to the RTRS facility to create the RTRS Academic Data Product, which would be made available only to academic institutions and would include the same transactions included in the current RTRS historical transaction data sets, with the exclusion of list offering price and takedown transactions, which can be used to identify primary market transactions.[7]

While the MSRB understands that anonymized dealer identifiers may be highly useful to academic institutions in connection with their research activities, the MSRB also recognizes that dealers may be concerned with the potential for reverse engineering of anonymized dealer identifiers to determine dealer identities. To address this issue, in addition to anonymizing dealer identifiers, the MSRB would take additional measures, including:

- Providing unique data sets with different anonymized dealer identifiers to each academic;
- excluding list offering price and takedown transactions;
- explicitly requiring subscribers to agree that they will not attempt to reverse engineer the identity of any dealer;
- prohibiting the redistribution of the data in the RTRS Academic Data Product;
- requiring users to disclose each intended use of the data (including a description of each study being performed and the names of each individual who will have access to the data for the study);
- requiring users to ensure that any data presented in work product be sufficiently aggregated so as to prevent reverse engineering of any dealer or transaction;
- requiring that the data be returned or destroyed if the agreement is terminated; and
- aging all the transactions included in the RTRS Academic Data Product for no less than 36 months.

The establishment of the RTRS Academic Data Product would add to the MSRB's current offering of data products and further the MSRB's mission to improve the transparency of the municipal securities market by facilitating access to municipal market data for academic institutions. While academic institutions currently have access to the post-trade municipal securities transaction data disseminated from RTRS, the RTRS Academic Data Product would improve the usefulness of this data by enabling academics to distinguish transactions executed by different dealers.

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[3] EMMA® is a registered trademark of the MSRB.

[4] Transactions in securities without CUSIP numbers, transactions in municipal fund securities and certain inter-dealer securities movements not eligible for comparison through a clearing agency are the only transactions exempt from the reporting requirements of Rule G–14.

[5] MSRB Notice 2015–10 (July 16, 2015) ("Request for Comment").

[6] *See infra* note 11.

[7] In addition, the MSRB intends to establish a fee for the RTRS Academic Data Product prior to the effective date of the proposed rule change. The fee will be established pursuant to a separate rule filing.

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act[8] provides that:

> [T]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by [dealers] and advice provided to or on behalf of municipal entities or obligated persons by [dealers] and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by [dealers] and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act,[9] provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2) and 15B(b)(2)(C) of the Exchange Act because it would prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market in municipal securities. Specifically, the RTRS Academic Data Product would enable subscribers of the product to better understand the pricing of certain transactions, as well as how such transactions were executed, which should, in turn, facilitate higher quality research and analysis. Overall, the proposed rule change would contribute to the MSRB's continuing efforts to improve market transparency and to protect investors, municipal entities, obligated persons and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act[10] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking. In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline. The MSRB also considered other economic impacts of the proposed rule change and has addressed comments relevant to these impacts in other sections of this document.

The MSRB believes that the availability of this data may further research, which could help the MSRB and other regulators: Prevent fraudulent and manipulative acts and practices; facilitate transactions in municipal securities and municipal financial products; remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products; and protect investors, municipal entities, obligated persons and the public interest.

The MSRB acknowledges the potential for reverse engineering of anonymized dealer identifiers to determine dealer identities and has taken a number of measures to reduce this risk and mitigate any potential impact. Given these measures and the aforementioned benefits, the MSRB does not believe that the proposed rule change will impose any additional burdens on competition, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB received 13 comment letters in response to the Request for Comment.[11] The comment letters are summarized below by topic, and the MSRB's responses are provided.

Support for the Proposed Rule Change

In response to the Request for Comment, several commenters expressed strong general support for the creation of the RTRS Academic Data Product. ABFM, AGFS, Bergstresser, Cusatis, Glassberg, NYU Stern and Ramsey believe it would improve the quality of academic research on, and contribute to enhanced transparency in, the municipal securities market. Further, Gifford opined that the draft proposal would allow for better cost-benefit analysis of public-private partnership projects that access the municipal securities market, and Coastal stated that trade data that would be made available by the draft proposal would contribute to academic research of the municipal securities market and that it should be supported. Finally, Harris strongly supports the RTRS Academic Data Product and commented that the draft proposal would "allow the MSRB to better regulate markets for the public good."

Risk of Reverse Engineering Trade Data

In the Request for Comment, the MSRB recognized that dealers may be concerned with the potential for reverse engineering of anonymized dealer identifiers to determine dealer identities from the data provided by the RTRS Academic Data Product, and it proposed several measures to prevent and deter those that would try to reverse engineer the trade data. Several commenters addressed this issue and proposed modifications to the draft proposal for purposes of preventing reverse engineering.

General Comments

BDA expressed concern that the draft proposal would allow reverse engineering of a dealer's trading/investment strategy and the requirements of the subscription agreement would not sufficiently protect dealers, thus, exposing them to an "unnecessary business risk." BDA further stated that data on municipal securities transactions that are currently available to the public for academic research "include a sufficient level of detail to support rigorous study." SIFMA also expressed concern that the proposed anonymization of dealer identifiers would not effectively protect dealer identities. Harris commented that use of the RTRS Academic Data Product may result in some reverse engineering, which may cause some level of harm to dealers, but he also stated that, while he believes engaging in reverse engineering would be inappropriate, it may "serve the public interest" by revealing "price differentials (known as markups by many) . . . to [dealers'] customers." ABFM commented that the planned terms of the subscription agreement intended to prevent reverse engineering would be a sufficient deterrent.

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[8] 15 U.S.C. 78*o*–4(b)(2).

[9] 15 U.S.C. 78*o*–4(b)(2)(C).

[10] *Id.*

[11] *See* letters from: Robert Doty, American Governmental Financial Services ("AGFS"), dated August 24, 2015; Robert Kravchuck, *et al.*, Association for Budgeting and Financial Management ("ABFM"), dated September 13, 2015; Michael Nicholas, Chief Executive Officer, Bond Dealers of America ("BDA"), dated August 24, 2015; Daniel Bergstresser ("Bergstresser"), Associate Professor of Finance, Brandeis University, International Business School, dated September 14, 2015; Chris Melton, Executive Vice President, Coastal Securities ("Coastal") dated August 5, 2015; Patrick J. Cusatis ("Cusatis"), Associate Professor of Finance, Penn State Harrisburg, School of Business Administration, dated September 10, 2015; Jonathan L. Gifford ("Gifford"), Professor and Director of Center for Transportation P3 Policy, George Mason University, dated September 1, 2015; Andrew Glassberg ("Glassberg"), dated August 17, 2015; Lawrence Harris ("Harris"), Professor of Finance and Business Economics, University of Southern California, Marshall School of Business, dated September 6, 2015; John Mousseau ("Mousseau"), dated July 29, 2015; Norman White *et al.*, New York University, Leonard N. Stern School of Business ("NYU Stern"), dated September 16, 2015; James R. Ramsey ("Ramsey"), President, University of Louisville, dated September 4, 2015; Sean Davy, Managing Director, Capital Markets Division, and David L. Cohen, Managing Director and Associate General Counsel, Municipal Securities Division, Securities Industry and Financial Markets Association ("SIFMA"), dated September 11, 2015.

Since the inception of this rulemaking initiative, the MSRB has been acutely aware of the potential for reverse engineering the trade data that would be included in the RTRS Academic Data Product. Indeed, the MSRB acknowledges that the data provided in the RTRS Academic Data Product could be reverse engineered. However, the MSRB believes that the measures it would take—*e.g.,* anonymizing dealer identifiers, imposing liability on subscribers of the data for breaching the terms of the subscription agreement (which would, among other things, include a provision prohibiting reverse engineering), and limiting subscribers to academic institutions—, on balance, sufficiently reduce the risk of reverse engineering, and of harm resulting therefrom. Further, in response to the concerns raised by commenters, the MSRB is now proposing to: Increase the aging requirement for the trade data from 24 to 36 months prior to its release; provide unique data sets with different anonymized dealer identifiers to each academic, which may both help guard against coordinated efforts at attempting reverse engineering dealer identities, as well as assist in identifying the source of conduct that violates the subscription agreement; exclude list offering price and take down transactions, which can be used to identify primary market transactions; require users to ensure the sufficient aggregation of any data presented in work product, which would protect against reverse engineering by readers of published works; and not include primary offering trades in the trade data. Overall, the MSRB has proposed numerous measures that should mitigate the risk of reverse engineering, and the residual risk is warranted by the benefits to the municipal securities market that would result from creation of the RTRS Academic Data Product and greater transparency of dealer behavior. The MSRB may consider amending or discontinuing the RTRS Academic Data Product, as currently proposed, if future experience shows that anonymized dealer identifiers are reverse engineered by researchers.

Aging Trade Data

As noted above, as part of the MSRB's effort to prevent and deter reverse engineering of dealer identities, the draft proposal required that the trade data made available to subscribers of the RTRS Academic Data Product would be for trades that were executed at least 24 months prior to the date that they were provided to the subscriber. SIFMA stated, in combination with other concerns about the draft proposal, that 24 months is too short of a time period to adequately protect against reverse engineering, and, instead, suggested that the MSRB age the trade data for 48 months. In contrast, ABFM believed 12 months, rather than 24, would be a sufficient time period to ensure that trades could not be reverse engineered, and Ramsey also suggested 12 months would be preferable to 24 months to ensure the data is timely. Harris argued that 24 months would be more than sufficient for aging the data to remove the usefulness of that data for the purpose of reverse engineering, in part, because he believes dealer positions change in no more than two months, and he also noted that as few as six or up to 12 months would be a better length of time because it would allay the concerns of dealers and allow for the "identifying [of] parasitic trading strategies as quickly as possible." Coastal believes 12 months would be too short a time period to sufficiently mitigate the reverse engineering risk but that 24 months would be appropriate and would not encumber research because, in its opinion, municipal securities market practices and conditions are "slow to evolve," making the data still relevant to academics studying market behavior.

Based on careful consideration of all of the diverse comments on this issue, the MSRB believes, at this time, that a 36-month period is appropriate to protect against, and mitigate the risk and potential harm from, any reverse engineering, while still providing useful trade data for academics to study.

Grouped Versus Individual Dealer Identifiers

In the draft proposal, the MSRB proposed anonymizing identifiers for each individual dealer for the trade data made available through the RTRS Academic Data Product to protect against the potential of subscribers reverse engineering the data to determine dealer identities. A few commenters suggested alternative methods to anonymize dealer identities. Specifically, BDA stated that grouping dealers by size, as opposed to issuing individual anonymized identifiers, would better protect the trade data from reverse engineering if the MSRB does not plan on changing the dealer identifiers on a regular basis because, without periodic changes, it would become easier to identify dealers based on trading data over a long period of time. SIFMA similarly supported making the trade data available through "groupings of comparable dealers," arguing that the MSRB and FINRA should "adopt the peer group criteria used in MSRB and FINRA report cards to aggregate dealers into reportable groups." Further, Coastal stated that, if dealers were not grouped by size, then reverse engineering would likely occur, while grouping by size would not substantially encumber research uses of the trade data. Coastal also argued that contracting with subscribers to prevent reverse engineering would not be effective, and BDA noted that any subscription agreement would not extend to readers of studies produced by subscribers.

In support of individual identifiers, Harris stated that the "empirical work [of academics] requires high quality data that can inform their analyses as to what dealers do. Dealer identities thus need to be revealed, at a minimum in anonymized form, so that academics can understand how dealer trading decisions relate to their previous trading decisions." To this point, Harris stated that grouping dealers would likely provide better trade data than is currently available to academics, but that such grouped data would not provide academics with the information needed to understand specific dealer behavior. He stated, "[D]ealer decisions to offer, not offer, and take liquidity are made by individual dealers in response to their individual needs and inventory conditions. Groups of dealers acting in concert do not make these decisions. To better understand these decisions, you must see who is making them." Additionally, Bergstresser argued that grouping dealers by size would substantially hinder the purpose of the RTRS Academic Data Product because it would reduce "the information content of the data [and] would negate the entire purpose of having (anonymized) dealer identities, which is to be able to identify round-trip transactions.'' Similarly, Ramsey stated that anonymizing dealer identifiers would be reasonable if it allowed tracking unique trades, which groupings by size or volume would not, and ABFM commented that the potential beneficial research that could result from the RTRS Academic Data Product with individual dealer identifiers would likely be much greater than if ''the dealer identifier is less precise (*e.g.,* a categorical identifier based on dealer size or average daily trading volume).''

The MSRB believes, at this time, that it would better further the principal purpose of creating the RTRS Academic Data Product—namely, to foster detailed research and analysis of municipal securities trading—if the trade data identifies dealers individually rather than by group. The MSRB believes that grouping dealers would result in too great a reduction in the usefulness of the RTRS Academic Data Product, and, as previously mentioned, that the protections incorporated in the proposed rule change, including, but not limited to, the 36-month aging of the data, and terms planned to be included in the subscription agreement will, on balance, adequately mitigate the risk of reverse engineering without the grouping of dealers.

Primary Offering Data

As proposed in the Request for Comment, the RTRS Academic Data Product would make trade data available from transactions in both the primary and secondary markets. SIFMA believes that the potential for reverse engineering primary market trade data is particularly acute because, in its view, the currently available public data that does not have dealer identifiers is already subject to reverse engineering. SIFMA recommended that, if made available on a dealer-by-dealer basis, the data provided by the RTRS Academic Data Product exclude primary trades from the data set and periodically scramble dealer identifiers.

The MSRB agrees with SIFMA regarding primary market trades, in light of trade data products currently offered by the MSRB to provide academics and other interested parties with information about the primary market for municipal securities. Therefore, the RTRS Academic Data Product would not include list offering price and takedown transactions, which can be used to identify primary market transactions.

Release of Full Trade Sizes in RTRS Academic Data Product

Harris commented that the RTRS Academic Data Product should provide full trade sizes and that the utility of the RTRS Academic Data Product would be reduced if the trade data did not reveal the sizes of the largest trades.

The MSRB understands the potential issues academic researchers could encounter if the full size of trades is not included in the trade data, and, therefore, the proposed rule change would provide the full size of each trade that is included in the RTRS Academic Data Product.

Limiting RTRS Academic Data Product to Academic Institutions

As proposed in the Request for Comment, the RTRS Academic Data Product would only be made available to academics in connection with their research activities. Commenters had differing views as to whether or not the subscriber base should be larger. First, Bergstresser suggested that the MSRB broaden the set of individuals who could have access to the RTRS Academic Data Product to include, for example, researchers associated with the Federal Reserve Board, individual Federal Reserve Banks, and other institutions such as the Brookings Institution, the American Enterprise Institute, and the Urban Institute. Bergstresser stated further that excluding researchers from such institutions would be ''inappropriate and would hamper the progress of research on the municipal bond market.'' Second, Harris stated that ''[i]t would not be fair or in the public interest if interested industry groups could not replicate academic studies or produce their own'' and that the RTRS Academic Data Product should be available to anyone. Harris added that the trade data needs to be made widely available so that academics can have a reasonable expectation that others will replicate, and potentially challenge, the research they conduct on the trade data. In contrast, Coastal argued that the availability of the RTRS Academic Data Product should be limited to academics to provide additional protection against reverse engineering of the trade data. ABFM affirmatively stated that it took no position on whether the data product should be limited to, or expanded beyond, academics, but stated that the MSRB should not base access to the RTRS Academic Data Product on the content, or results, of the requesting researcher's previously published works. Similarly, Harris also stated that access to the RTRS Academic Data Product should not be made contingent on the resulting research produced. Finally, SIFMA stated that the RTRS Academic Data Product should be available to ''[a]ny not-for-profit that has a separately identifiable Research Department and regularly publishes research reports'' on the same terms that it would be available to academics, but only if other modifications suggested by SIFMA were made, such as anonymizing dealer identities by group and aging the data for 48 months.

The establishment of the RTRS Academic Data Product was conceived as a means of advancing a goal of the MSRB's Long-Range Plan for Market Transparency Products[12] by facilitating access to municipal market data for academics to conduct research on the municipal securities market. The MSRB believes that limiting the availability of the RTRS Academic Data Product to academic institutions will facilitate transparency, while not exposing the trade data to institutions or organizations that could have a more direct incentive to use the trade data for commercial purposes. The MSRB is committed to increasing market transparency and, in the future, after the use of the RTRS Academic Data Product has been observed, the MSRB may reconsider providing access to the data to a larger group of researchers. However, at this time, the MSRB believes that limiting the RTRS Academic Data Product to academic institutions helps address the concerns of dealers about the use of the data, while advancing the purpose of the product to foster academic research on the municipal securities market.

Pricing of the RTRS Academic Data Product

As proposed in the Request for Comment, the RTRS Academic Data Product would be made available for a fee of $500 per calendar-year data set (with a one-time initial set-up fee of $500).[13] Harris commented that academics should either pay a reduced rate, when compared to the fee charged to industry participants and their various organizations and consultants, or be given access for free because, in his opinion, academics are often not paid to conduct their research while the public obtains a benefit from the research being conducted. ABFM believes the fee is reasonable.

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[12] MSRB Long-Range Plan for Market Transparency Products (January 27, 2012), *available at: http://www.msrb.org/msrb1/pdfs/Long-Range-Plan.pdf.*

[13] The MSRB notes that the Request for Comment proposed the availability of the RTRS Academic Data Product in calendar-year data sets, but, as it does with other data products and as described above, the MSRB would make the RTRS Academic Data Product available on a rolling basis in one-year data sets.

As noted above, the MSRB intends to establish a fee for the RTRS Academic Data Product prior to the effective date of the proposed rule change. The fee will be established pursuant to a separate rule filing in which Harris' comment will be addressed.[14]

Subscription Agreement

As part of the Request for Comment, the MSRB included a draft description of the subscription agreement into which recipients of the RTRS Academic Data Product ("Recipients") would be required to enter with the MSRB before access to the data would be granted ("Draft Agreement"). Some commenters requested clarification of, and others raised concerns about potential issues that could arise from, the terms of the Draft Agreement.

Liability for Breach of Draft Agreement

The MSRB included a liability provision in the Draft Agreement to, in part, deter and prevent reverse engineering and/or other misuse of the trade data provided by the RTRS Academic Data Product. Several commenters expressed concern regarding this provision that would hold Recipients "liable to the MSRB for any breach of the [Draft Agreement] resulting from the action/inaction of Recipient's internal users or any other individual or entity that accesses the [RTRS Academic Data Product] via Recipient or to whom Recipient provides any derivative works." In particular, ABFM commented that the inclusion of the provision would be overly burdensome for academic institutions and may preclude some from subscribing. ABFM further suggested, as an alternative, that liability be limited to two times the price paid by the Recipient for the data and that holding a Recipient liable to the extent described by the Draft Agreement would be unreasonable. Bergstresser, Cusatis and Ramsey expressed similar views, and each stated that the liability exposure could prevent an academic institution from signing the Draft Agreement and using the RTRS Academic Data Product. In contrast, Harris stated that the terms of the Draft Agreement generally were sufficient and not unduly restrictive.

Publication of Works Based on Data

In the Request for Comment, the MSRB asked whether academics would be opposed to including, as a term of the agreement, a requirement that a copy of all derivative works that rely on the RTRS Academic Data Product be provided to the MSRB upon publication. In response, Harris requested that the MSRB provide more specifics regarding what is meant by the term "publication" because, in his view, academics may have differing understandings of when works of research are considered "published." Harris further stated that, if academics are required to send published works to the MSRB, they should only be required to do so after the work is no longer described by its author as a "Working Draft—Not for Quotation—Subject to Change" and can be found via an internet search. ABFM stated that it believes that academics would not be opposed to providing the MSRB with all published works relying on the data from the RTRS Academic Data Product, so long as the MSRB did not require the academic to share authorship of the work or the copyright of such works.

Permissible Use and Security of the Trade Data

SIFMA commented that the draft proposal did not state who at academic institutions would be able to access the trade data and requested that the MSRB modify the draft proposal to include "parameters around who may be considered an 'Internal User' or 'Recipient/Licensee.'" In addition, SIFMA also suggested that the MSRB further limit "Authorized Use" to serve the purpose of research and to exclude any commercial use of the trade data. Overall, SIFMA expressed a concern that the creation of the RTRS Academic Data Product would lead to an inevitable data breach, revealing dealer trading and distribution strategies, which could have a negative impact on market liquidity. Similarly, BDA noted that nothing in the Draft Agreement would require academic institutions to have a minimum level of data security protections in place, making the data susceptible to theft.

The MSRB understands and appreciates the comments provided in response to the terms of the Draft Agreement presented in the Request for Comment. The MSRB included those terms and solicited comment on them primarily to determine whether to establish the RTRS Academic Data Product, and the subscription agreement into which academics and/or academic institutions would be required to enter ("Final Agreement"), and the terms thereof, have yet to be finalized. If the RTRS Academic Data Product is approved, the MSRB will, as it does for all of its subscription service agreements, conduct a thorough legal and risk analysis to ensure that it is adequately protected from possible breaches of the agreement, as well as consider the potential burdens placed on all parties to the agreement in light of the intended benefits. In performing this analysis, the MSRB will take all of the above comments into consideration.

As noted above, given the potential risk of the trade data included in the RTRS Academic Data Product being reverse engineered, the MSRB believes the subscription agreement will be an important complement to the measures included in the proposal to mitigate that risk. As such, the MSRB expects that the Final Agreement will include a liability provision substantially similar to the one included in the Draft Agreement to deter and prevent reverse engineering and other potential breaches of the agreement. The MSRB also expects that the Final Agreement will include a definition of "publication" to provide clarity to academics on what work product to provide to the MSRB and when, and will not require any form of joint authorship with the MSRB. Finally, the MSRB expects that the Final Agreement will define "Internal User" to clarify to whom access to the data may be provided and require reasonable security measures to protect the data from unauthorized access by controlling how they are used, accessed, processed, stored and/or transmitted.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

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[14] *See supra* note 7.

- Send an email to *rule-comments@sec.gov. Please include File Number SR–MSRB–2016–09 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2016–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2016–09 and should be submitted on or before August 10, 2016.

For the Commission, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17094 Filed 7–19–16; 8:45 am]

BILLING CODE 8011–01–P

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78329; File No. SR–BatsBZX–2016–01]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 8 Thereto, to List and Trade Under BZX Rule 14.11(c)(4) Shares of the Following Series of VanEck Vectors ETF Trust: VanEck Vectors AMT-Free 6–8 Year Municipal Index ETF; VanEck Vectors AMT-Free 8–12 Year Municipal Index ETF; and VanEck Vectors AMT-Free 12–17 Year Municipal Index ETF

July 14, 2016.

I. Introduction

On March 29, 2016, Bats BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade under BZX Rule 14.11(c)(4) the shares ("Shares") of the following series of VanEck Vectors ETF Trust ("Trust"): VanEck Vectors AMT-Free 6–8 Year Municipal Index ETF; VanEck Vectors AMT-Free 8–12 Year Municipal Index ETF; and VanEck Vectors AMT-Free 12–17 Year Municipal Index ETF (individually, "Fund" and, collectively, "Funds"). The proposed rule change was published for comment in the **Federal Register** on April 18, 2016.[3] On June 1, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On June 14, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On June 23, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.[6] On July 8, 2016, the Exchange filed: (1) Amendment No. 4 to the proposed rule change;[7] (2) Amendment No. 5 to the proposed rule change;[8] and (3) Amendment No. 6 to the proposed rule change.[9] On July 12, 2016, the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77596 (April 18, 2016), 81 FR 22681 ("Notice").

[4] In Amendment No. 1, the Exchange: (a) Clarified the names of the exchange-traded funds ("ETFs") by replacing references to "Market Vectors" with "VanEck Vectors"; (b) added representations relating to continued listing compliance and Exchange delisting procedures in the event of non-compliance with respect to the proposal; (c) clarified certain holdings of the Funds by (i) replacing references to "to-be-announced" or "TBA" transactions with "when-issued" or "WI" transactions, (ii) deleting references to over-the-counter options on futures contracts, (iii) deleting statements relating to certain swaps, and (iv) deleting information relating to municipal bonds that are not included in the applicable underlying indices; (d) made conforming and clarifying changes in describing the calculation of net asset value of the Funds; (e) changed the creation unit size of the Funds from 100,000 Shares to 50,000 Shares; and (f) clarified that information with respect to the mid-point of the bid/ask spread would not be publicly available; and (g) added availability of information relating to the underlying indices. Because the changes in Amendment No. 1 to the proposed rule change clarify certain statements in the proposal and do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 1, which amended and replaced the Notice in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-2.pdf.*

[5] In Amendment No. 2, the Exchange: (a) Clarified the other portfolio holdings of the Funds with respect to other municipal bonds; (b) added statements with respect to certain swaps; (c) corrected a typographical error; and (d) clarified that each Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Funds that formed the basis for each Fund's calculation of net asset value at the end of the previous business day. Because the changes in Amendment No. 2 to the proposed rule change are technical in nature and do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 2, which amended and replaced the proposed rule change, as modified by Amendment No. 1 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-3.pdf.*

[6] In Amendment No. 3, the Exchange: (a) Deleted extraneous language previously corrected by Amendment No. 2 to the proposed rule change relating to certain swaps; and (b) corrected a technical redundancy with respect to a defined term. Because the changes in Amendment No. 3 to the proposed rule change are technical in nature and do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 3, which amended and replaced the proposed rule change, as modified by Amendment No. 2 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-4.pdf.*

[7] In Amendment No. 4, the Exchange corrected errors made with respect to the names of the Funds by adding "AMT-Free" to certain references made in the proposal. Because the changes in Amendment No. 4 to the proposed rule change are technical in nature and do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 4, which amended and replaced the proposed rule change, as modified by Amendment No. 3 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-5.pdf.*

[8] On July 8, 2016, the Exchange withdrew Amendment No. 5 to the proposed rule change.

[9] In Amendment No. 6, the Exchange further corrected the names of the Funds by removing references to "AMT-Free." Because the changes in Amendment No. 6 to the proposed rule change are technical in nature and do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 6, which amended and replaced the proposed rule change, as modified by Amendment No. 4 thereto, in its entirety, is

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Exchange filed Amendment No. 7 to the proposed rule change.[10] On July 13, 2016, the Exchange filed Amendment No. 8 to the proposed rule change.[11] The Commission received one comment on the proposed rule change.[12] This order grants approval of the proposed rule change, as modified by Amendment No. 8 thereto.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade Shares of the following series of the Trust under BZX Rule 14.11(c)(4): VanEck Vectors AMT-Free 6–8 Year Municipal Index ETF; VanEck Vectors AMT-Free 8–12 Year Municipal Index ETF; and VanEck Vectors AMT-Free 12–17 Year Municipal Index ETF. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on March 15, 2001. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A ("Registration Statement") with the Commission.[13]

Van Eck Associates Corporation will be the investment adviser ("Adviser") to the Funds. The Adviser will serve as the administrator for the Fund. The Bank of New York Mellon will serve as the custodian and transfer agent for the Funds. Van Eck Securities Corporation will be the distributor of the Shares. Barclays Inc. will be the index provider.

The Exchange has made the following representations and statements in describing the Funds and their respective investment strategies, including the Funds' portfolio holdings and investment restrictions.[14]

A. Exchange's Description of the Funds' Principal Investments

According to the Exchange, the Funds and the Shares will seek to track the performance of a benchmark index that measures the investment-grade segment of the U.S. municipal bond market, as described below. Specifically, with respect to each of the VanEck Vectors AMT-Free 6–8 Year Municipal Index ETF, VanEck Vectors AMT-Free 8–12 Year Municipal Index ETF, and VanEck Vectors AMT-Free 12–17 Year Municipal Index ETF, the Shares will replicate as closely as possible, before fees and expense, the price and yield performance of the Barclays AMT-Free-6–8 Year Intermediate Continuous Municipal Index ("6–8 Year Index"); the Barclays AMT-Free-8–12 Year Intermediate Continuous Municipal Index ("8–12 Year Index"); and the Barclays AMT-Free-12–17 Year Intermediate Continuous Municipal Index ("12–17 Year Index," and together with the 6–8 Year Index and the 8–12 Year Index, collectively, "Indices"), respectively.

To be included in each of the Funds, the Exchange states that a bond must be rated Baa3/BBB- or higher by at least two of the following ratings agencies if all three agencies rate the security: Moody's, S&P and Fitch. If only two of the three agencies rate the security, the lower rating is used to determine index eligibility. If only one of the three agencies rates a security, the rating must be at least Baa3/BBB-. Potential constituents must have an outstanding par value of at least $7 million and be issued as part of a transaction of at least $75 million. The bonds must be fixed rate, have a dated date within the last five years, and have an effective maturity that tracks each respective Fund. The following types of bonds are excluded from each of the Funds: Bonds subject to the alternative minimum tax, taxable municipal bonds, floating rate bonds, and derivatives. The Funds are calculated using a market value weighting methodology.

The composition of each of the Funds is rebalanced monthly. Interest and principal payments earned by the component securities are held in the Fund without a reinvestment return until month end when they are removed. Qualifying securities issued, but not necessarily settled, on or before the month end rebalancing date qualify for inclusion in each of the Funds in the following month. The Exchange notes that when-issued transactions ("WIs")[15] representing securities in the 6–8 Year, 8–12 Year, and 12–17 Year Indices may be used by the Fund in seeking performance that corresponds to the 6–8 Year, 8–12 Year, and 12–17 Year Indices, respectively, and, in such cases, would count towards the respective Fund's 80% policy.

Each of the Funds normally will invest at least 80% of its total assets in securities that comprise the Fund's corresponding benchmark index. The Funds will be comprised of publicly traded municipal bonds that cover the U.S. dollar-denominated intermediate term tax-exempt bond market with final maturities corresponding to the Index timeframe. Each Fund's 80% investment policy is non-fundamental and may be changed without shareholder approval upon 60 days' prior written notice to shareholders.[16]

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available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-6.pdf.*

[10] In Amendment No. 7, the Exchange (a) further corrected errors in the names of the Funds; and (b) clarified that (i) all statements and representations regarding each Fund's 80% Investment Policy (as defined herein) constitute continued listing requirements for listing the Shares on the Exchange, (ii) the issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements (or any changes made with respect to a Fund's 80% Investment Policy), and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements, and (iii) if the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. *See infra* note 16 and accompanying text. Because the changes in Amendment No. 7 to the proposed rule change do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 7, which amended and replaced the proposed rule change, as modified by Amendment No. 6 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-7.pdf.*

[11] In Amendment No. 8, the Exchange corrected an error identifying the Amendment number. Because the changes in Amendment No. 8 to the proposed rule change do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 8, which amended and replaced the proposed rule change, as modified by Amendment No. 7 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-8.pdf.*

[12] *See* Letter from Anonymous dated May 3, 2016, available at: *http://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-1.htm* (commenting that the proposed rule change was "good").

[13] *See* Registration Statement on Form N–1A (File Nos. 333–123257 and 811–10325) dated October 29, 2015. According to the Exchange, the Trust has obtained certain exemptive relief from the Commission under the Investment Company Act of 1940 ("1940 Act"). *See* Investment Company Act Release No. 28021 (October 24, 2007) (File No. 812–13426).

[14] The Commission notes that additional information regarding the Funds, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Notice, as modified by Amendment No. 8 thereto, and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 13, respectively. *See also* Amendment No. 8 to the proposed rule change, *supra* note 11.

[15] According to the Exchange, when-issued is a transaction that is made conditionally because a security has been authorized but not yet issued. Treasury securities, stock splits, and new issues of stocks and bonds are all traded on a when-issued basis.

[16] While each Fund's policy to invest 80% of its total assets in securities that comprise the Fund's benchmark index ("80% Investment Policy") is non-fundamental and may be changed without shareholder approval upon 60 days' prior written notice to shareholders, the Exchange represents that, notwithstanding the foregoing, all statements and representations made in this filing regarding (a) the description of the portfolios, (b) limitations on portfolio holdings or reference assets (including, for example, each Fund's 80% Investment Policy), or (c) the applicability of Exchange rules and

B. Exchange's Description of the Funds' Other Investments

While each of the Funds normally will invest at least 80% of its total assets in securities that compose the 6–8 Year, 8–12 Year, and 12–17 Year Indices, as described above, the Funds may invest their remaining assets in other financial instruments, as described below.

The Funds may invest remaining assets in securities not included in the respective Indices, including only the following instruments: Municipal bonds (not described above); money market instruments, including repurchase agreements or other funds which invest exclusively in money market instruments; convertible securities; structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index);[17] certain derivative instruments described below; and, to the extent permitted by the 1940 Act, affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other ETFs.[18] In addition to the use described above, WIs not included in each of the Indices may also be used by each of the Funds in managing cash flows.

The Funds may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral.

The Funds may use exchange-traded futures contracts and exchange-traded options thereon, together with positions in cash and money market instruments, to simulate full investment.

The Funds may use cleared or non-cleared index, interest rate or credit default swap agreements. According to the Exchange, interest rate swaps and credit default swaps on indexes currently may be cleared; however, credit default swaps on a specific security are currently uncleared.

The Funds may invest in exchange-traded warrants, which are equity securities in the form of options issued by a corporation which give the holder the right to purchase stock, usually at a price that is higher than the market price at the time the warrant is issued.

The Funds may invest in participation notes, which are issued by banks or broker-dealers and are designed to offer a return linked to the performance of a particular underlying equity security or market.

The Funds will only enter into transactions in derivative instruments with counterparties that the Adviser reasonably believes are capable of performing under the contract and will post collateral as required by the counterparty.[19]

C. Exchange's Description of the Indices and Bats BZX Rule 14.11(c)(4)

The Exchange is submitting this proposed rule change because the Indices underlying the corresponding Funds do not meet all of the "generic" listing requirements of BZX Rule 14.11(c)(4) applicable to the listing of Index Fund Shares based on fixed income securities indexes.

1. *6–8 Year Index.* According to the Exchange, the 6–8 Year Index meets all of the requirements of BZX Rule 14.11(c)(4) except for those set forth in BZX Rule 14.11(c)(4)(B)(i)(b).[20] Specifically, as of December 31, 2015, only 9.8% of the weight of the 6–8 Year Index components have a minimum original principal amount outstanding of $100 million or more.

According to the Exchange, as of December 31, 2015, 95.1% of the weight of the 6–8 Year Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the 6–8 Year Index was approximately $57.4 billion, and the average dollar amount outstanding of issues in the 6–8 Year Index was approximately $19.8 million. Further, the most heavily weighted component represented 1.07% of the weight of the 6–8 Year Index, and the five most heavily weighted components represented 3.0% of the weight of the 6–8 Year Index.[21] In addition, the Exchange notes that the 6–8 Year Index is comprised of approximately 2,894 issues, and that 63.8% of the 6–8 Year Index weight consisted of issues with a rating of AA/Aa2 or higher.

The 6–8 Year Index value, calculated and disseminated at least once daily, as well as the components of the 6–8 Year Index and their percentage weighting, will be available from major market data vendors. In addition, the portfolio of securities held by the Fund will be disclosed on the Fund's Web site.

2. *8–12 Year Index.* According to the Exchange, the 8–12 Year Index for the Fund meets all of the requirements of BZX Rule 14.11(c)(4), except for those set forth in BZX Rule 14.11(c)(4)(B)(i)(b).[22] Specifically, as of December 31, 2015, only 5.7% of the weight of the 8–12 Year Index components have a minimum original principal amount outstanding of $100 million or more.

According to the Exchange, as of December 31, 2015, 95.1% of the weight of the 8–12 Year Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the 8–12 Year Index was approximately $108.6 billion, and the average dollar amount outstanding of issues in the 8–12 Year Index was approximately $19.2

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surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. As noted herein, the issuer also has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements (or any changes made with respect to a Fund's 80% Investment Policy), and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

[17] Structured notes are derivative securities for which the amount of principal repayment and/or interest payments is based on the movement of one or more factors, including, but not limited to, currency exchange rates, interest rates (such as the prime lending rate or LIBOR), referenced bonds, and stock indices.

[18] For purposes of this proposal, ETFs include: Index Fund Shares (as described in BZX Rule 14.11(c)); Portfolio Depositary Receipts (as described in BZX Rule 14.11(b)); and Managed Fund Shares (as described in BZX Rule 14.11(i)). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Funds may invest in the securities of ETFs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (*e.g.,* 2X, -2X, 3X, or -3X) ETFs.

[19] The Funds will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser will review approved counterparties using various factors, which may include the counterparty's reputation, the Adviser's past experience with the counterparty and the price/market actions of debt of the counterparty.

[20] BZX Rule 14.11(c)(4)(B)(i)(b) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[21] BZX Rule 14.11(c)(4)(B)(i)(d) provides that no component fixed-income security (excluding Treasury Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[22] *See supra* note 20.

million. Further, the most heavily weighted component represented 0.26% of the weight of the 8–12 Year Index, and the five most heavily weighted components represented 1.04% of the weight of the 8–12 Year Index.[23] In addition, the Exchange represents that the 8–12 Year Index is comprised of approximately 5,662 issues, and that 64.7% of the 8–12 Year Index weight consisted of issues with a rating of AA/Aa2 or higher.

The 8–12 Year Index value, calculated and disseminated at least once daily, as well as the components of the 8–12 Year Index and their percentage weighting, will be available from major market data vendors. In addition, the portfolio of securities held by the Fund will be disclosed on the Fund's Web site.

3. *12–17 Year Index.* According to the Exchange, the 12–17 Year Index meets all of the requirements of BZX Rule 14.11(c)(4), except for those set forth in BZX Rule 14.11(c)(4)(B)(i)(b).[24] Specifically, as of December 31, 2015, only 8.3% of the weight of the 12–17 Year Index components have a minimum original principal amount outstanding of $100 million or more.

According to the Exchange, as of December 31, 2015, 95.3% of the weight of the 12–17 Year Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding $100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the 12–17 Year Index was approximately $123.5 billion, and the average dollar amount outstanding of issues in the 12–17 Year Index was approximately $20 million. Further, the most heavily weighted component represented 0.29% of the weight of the 12–17 Year Index, and the five most heavily weighted components represented 1.11% of the weight of the 12–17 Year Index.[25] The Exchange further represents that the 12–17 Year Index is comprised of approximately 6,171 issues, and that 61.2% of the 12–17 Year Index weight consisted of issues with a rating of AA/Aa2 or higher.

The 12–17 Year Index value, calculated and disseminated at least once daily, as well as the components of the 12–17 Year Index and their percentage weighting, will be available from major market data vendors. In addition, the portfolio of securities held by the Fund will be disclosed on the Fund's Web site.

D. Additional Exchange Representations

The Exchange represents that: (1) Except for BZX Rule 14.11(c)(4)(B)(i)(b), the 6–8 Year Index, the 8–12 Year Index, and the 12–17 Year Index currently and will continue to satisfy all of the generic listing standards under BZX Rule 14.11(c)(4); (2) the continued listing standards under BZX Rule 14.11(c) applicable to Index Fund Shares will apply to the Shares of each Fund; and (3) the Trust is required to comply with Rule 10A–3 under the Act[26] for the initial and continued listing of the Shares of each Fund. In addition, the Exchange represents that the Shares of the Funds will comply with all other requirements applicable to Index Fund Shares including, but not limited to, requirements relating to the dissemination of key information such as the value of the Indices and the Intraday Indicative Value ("IIV"), rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[27] and the rules and regulations thereunder applicable to a national securities exchange.[28] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[29] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[30] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA"). *The current value of the Indices will be widely disseminated by one or more major market data vendors*[31] *at least once per day.* In addition, during Regular Trading Hours[32] an IIV for the Shares of the Funds will be disseminated by one or more major market data vendors and updated at least every 15 seconds.[33] On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, each Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Funds that formed the basis for each Fund's calculation of NAV at the end of the previous business day.[34]

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[23] *See supra* note 21.

[24] *See supra* note 20.

[25] *See supra* note 21.

[26] 17 CFR 240.10A–3.

[27] 15 U.S.C. 78f.

[28] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 17 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[31] The Exchange further states that the components of the Indices and their percentage weighting will be available from major market data vendors.

[32] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[33] According to the Exchange, several major market data vendors display and/or make widely available IIVs *taken from* the CTA or other data feeds. *See* Notice, as modified by Amendment No. 8 thereto, *supra* note 11, at n.29.

[34] The NAV of each Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m. Eastern Time) on the Exchange. Any assets or liabilities denominated in currencies other than the U.S. dollar are converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources. The values of each Fund's portfolio securities are based on the securities' closing prices, when available. In the absence of a last reported sales price, or if no sales were reported, and for other assets for which market quotes are not readily available, values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service. Fixed income securities, repurchase agreements, and money market instruments with maturities of more than 60 days are normally valued on the basis of quotes from brokers or dealers, established market makers, or an outside independent pricing service. Prices obtained by an outside independent pricing service may use information provided by market makers or estimates of market values obtained from yield data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in determining what it believes is the fair value of the portfolio securities. Short-term investments and money market instruments having a maturity of 60 days or less are valued at amortized cost. Futures contracts will be valued at the settlement price established each day by the board or exchange on which they are traded. Exchange-traded options will be valued at the closing price in the market where such contracts are principally traded. Swaps, structured notes, participation notes, convertible securities, and WIs will be valued based on valuations provided by independent, third-party

The daily disclosed portfolio will include, as applicable: the ticker symbol; CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. Quotation information for investment company securities (excluding ETFs) may be obtained through nationally recognized pricing services through subscription agreements or from brokers and dealers who make markets in such securities. Price information regarding municipal bonds, convertible securities, and non-exchange traded assets, including investment companies, derivatives, money market instruments, repurchase agreements, structured notes, participation notes, and WIs is available from third party pricing services and major market data vendors. For exchange-traded assets, including investment companies, futures, warrants, and options, such intraday information is available directly from the applicable listing exchange. Rules governing the Indices are available on Barclays' Web site and in each respective Fund's prospectus. The Web site for the Funds also will include the prospectus for the Funds and additional data relating to the NAV and other applicable quantitative information.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to BZX Rule 14.11(c)(1)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.

Based on the Exchange's representations, the Commission believes that the Indices are sufficiently broad-based to deter potential manipulation. The Exchange represents that, as of December 31, 2015, the 6–8 Year Index had the following characteristics: there were 2,894 issues; 9.8% of the weight of components had a minimum original principal amount outstanding of $100 million or more; 95.1% of the weight of components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering; the total dollar amount outstanding of all issues was approximately $57.4 billion, and the average dollar amount outstanding per issue was approximately $19.8 million; and the most heavily weighted component represented 1.07% of the 6–8 Year Index, and the five most heavily weighted components represented 3.0% of the 6–8 Year Index. The Exchange also represents that, as of December 31, 2015, the 8–12 Year Index had the following characteristics: there were 5,662 issues; 5.7% of the weight of components had a minimum original principal amount outstanding of $100 million or more; 95.1% of the weight of components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering; the total dollar amount outstanding of all issues was approximately $108.6 billion, and the average dollar amount outstanding per issue was approximately $19.2 million; and the most heavily weighted component represented 0.26% of the 8–12 Year Index, and the five most heavily weighted components represented 1.04% of the 8–12 Year Index. Likewise, the Exchange represents that, as of December 31, 2015, the 12–17 Year Index had the following characteristics: there were 6,171 issues; 8.3% of the weight of components had a minimum original principal amount outstanding of $100 million or more; 95.3% of the weight of components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering; the total dollar amount outstanding of all issues was approximately $123.5 billion, and the average dollar amount outstanding per issue was approximately $20 million; and the most heavily weighted component represented 0.29% of the 12–17 Year Index, and the five most heavily weighted components represented 1.11% of the 12–17 Year Index.

In support of this proposal, the Exchange has also made representations, including:

(1) The Shares of each Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(c)(4), except for those set forth in 14.11(c)(4)(B)(i)(b).

(2) Except for BZX Rule 14.11(c)(4)(B)(i)(b), the 6–8 Year Index, the 8–12 Year Index, and the 12–17 Year Index currently and will continue to satisfy all of the generic listing standards under BZX Rule 14.11(c)(4)

(3) The continued listing standards under BZX Rule 14.11(c) applicable to Index Fund Shares will apply to the Shares of each Fund.

(4) The Shares of the Funds will comply with all other requirements applicable to Index Fund Shares including, but not limited to, requirements relating to the dissemination of key information such as the value of the Indices and the Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules.

(5) The Exchange represents that trading in the Shares will be subject to the existing Exchange trading surveillances procedures. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal

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pricing agents. Securities of non-exchange-traded investment companies will be valued at NAV. Exchange-traded instruments, including investment companies and warrants, will be valued at the last reported sale price on the primary exchange or market on which they are traded. If a market quotation for a security is not readily available or the Adviser believes it does not otherwise accurately reflect the market value of the security at the time the Fund calculates its NAV, the security will be fair valued by the Adviser in accordance with the Trust's valuation policies and procedures approved by the Board of Trustees and in accordance with the 1940 Act.

securities laws applicable to trading on the Exchange.

(6) The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the Intermarket Surveillance Group ("ISG"), from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[35] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to the Financial Industry Regulatory Authority's Trade Reporting and Compliance Engine. The Exchange also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange-traded investment companies, futures, options, and warrants from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange prohibits the distribution of material, non-public information by its employees.

(7) For initial and continued listing of the Shares, the Trust is required to comply with Rule 10A–3 under the Act.[36]

(8) The Funds generally will invest at least 80% of their respective assets in the securities of the corresponding Indices. The Funds may invest up to 20% of their respective assets in other securities and financial instruments as described above and in the Notice, as modified by Amendment No. 3 thereto.

(9) If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The Exchange represents that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets (including, for example, each Fund's 80% Investment Policy), or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements (or any changes made with respect to a Fund's 80% Investment Policy), and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, as modified by Amendment No. 3 thereto, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 8 thereto, is consistent with Section 6(b)(5) of the Act[37] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (SR–BatsBZX–2016–01), as modified by Amendment No. 8 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17089 Filed 7–19–16; 8:45 am]

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[35] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the portfolio for a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[36] *See* 17 CFR 240.10A–3.

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78328; File No. SR–NYSEArca–2016–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to the Listing and Trading of Shares of BlackRock Government Collateral Pledge Unit Under NYSE Arca Equities Rule 8.600

July 14, 2016.

On May 19, 2016, NYSE Arca, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the BlackRock Government Collateral Pledge Unit. The proposed rule change was published for comment in the **Federal Register** on June 2, 2016.[3] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 17, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 31, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2016–63).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17098 Filed 7–19–16; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77941 (May 27, 2016), 81 FR 35425.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78330; File No. SR–BatsEDGA–2016–15]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Paragraph (c) to Exchange Rule 11.21 To Describe Changes to System Functionality Necessary To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

July 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt paragraph (c) to Exchange Rule 11.21 to describe changes to System[3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan" or "Pilot").[4] In determining the scope of the proposed changes to implement the Pilot,[5] the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, Bats BYX Exchange, Inc. ("BYX"), Chicago Stock Exchange, Inc., Bats BZX Exchange, Inc. ("BZX"), Bats EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program.[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a Control Group of approximately 1400 Pilot Securities and three Test Groups with 400 Pilot Securities in each Test Group selected by a stratified sampling.[10] During the Pilot, Pilot Securities in the Control Group will be quoted and traded at the currently permissible increments. Pilot Securities in the first Test Group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second Test Group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[12] Pilot Securities in the third Test Group ("Test Group Three") will be subject to the same restrictions as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a price of a Trading Center's[13] "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[14] The same exceptions provided under Test Group Two will also be available under the Trade-at Prohibition, with an additional exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS.[15]

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraph (a) of Rule 11.21 to require Members[16] to comply with the quoting and trading provisions of the Plan.[17] The Exchange also adopted paragraph (b) of Rule 11.21 to require Members to comply with the data collection provisions under Appendix B and C of the Plan.[18]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "System" is defined as the "electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(cc).

[4] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[5] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan.

[6] 15 U.S.C. 78k–1.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] *See* Approval Order, *supra* note 4.

[10] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[11] *See* Section VI(B) of the Plan.

[12] *See* Section VI(C) of the Plan.

[13] The Plan incorporates the definition of "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a Trading Center as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent."

[14] *See* Section VI(D) of the Plan.

[15] 17 CFR 242.611.

[16] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

Proposed System Changes

The Exchange proposes to adopt paragraph (c) of Exchange Rule 11.21 to describe changes to System functionality necessary to implement the Plan. Paragraph (c) of Rule 11.21 would set forth the Exchange's specific procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities. Unless otherwise indicated, paragraph (c) of Rule 11.21 would apply to order types and order type instructions in Pilot Securities in Test Groups One, Two, and Three and not to orders in Pilot Securities included in the Control Group. The proposed changes include select and discrete amendments to the operation of: (i) Market Orders; (ii) orders with a Market Peg instruction; (iii) MidPoint Peg Orders; (iii) orders with a Discretionary Range; (iv) orders with a Non-Displayed instruction; (v) Market Maker Peg Orders; (vi) Supplemental Peg Orders; and (vii) orders subject to the Display-Price Sliding process.

In determining the scope of these proposed changes to implement the Plan, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities. These proposed changes are designed to directly comply with the Plan and to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. As discussed below, certain of these changes are also intended to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage of certain order types in Pilot Securities and/or their limited ability to execute under the Trade-at Prohibition. Therefore, the Exchange firmly believes that these changes will have little or no impact on the operation and data collection elements of the Plan. The Exchange further believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.

Market Orders

A Market Order is an order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange.[19] Market Orders shall not trade through Protected Quotations. Any portion of a Market Order that would execute at a price more than $0.50 or 5 percent worse than the NBBO at the time the order initially reaches the Exchange, whichever is greater, will be cancelled.[20] In order to comply with the minimum quoting increments set forth in the Plan, the Exchange proposes to state under proposed Rule 11.21(c)(1) that for purposes of determining whether a Market Order's execution price is more than 5 percent worse than the NBBO under Rule 11.8(a)(7), the execution price for a buy (sell) order will be rounded down (up) to the nearest $0.05 increment.

Market Peg Instruction

The Exchange proposes to amend the operation of orders with a Market Peg instruction to reduce risk in its System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition in Test Group Three. An order with a Pegged instruction is automatically adjusted by the System in response to changes in the NBBO and will peg to the NBB or NBO or a certain amount away from the NBB or NBO.[21] An order with a Market Peg instruction is pegged to the contra-side NBBO.[22] A User[23] entering an order with a Market Peg instruction can specify that such order's price will offset the inside quote on the contra-side of the market by an amount (the "Offset") set by the User. An order with a Market Peg instruction is not eligible to be displayed on the Exchange.

In Test Groups One and Two, the Exchange proposes to modify the behavior of an order with a Market Peg instruction when it is locked by an incoming order with a Post Only instruction[24] that does not remove liquidity pursuant to Rule 11.6(n)(4).[25] In such case, the order with a Market Peg instruction would be converted to an executable order and will remove liquidity against such incoming order.[26] In no case would an order with a Market Peg instruction execute against an incoming order with a Post Only instruction if an order with higher priority is on the EDGA Book.[27] Specifically, if an order other than an order with a Market Peg instruction maintains higher priority than one or more orders with a Market Peg instruction, the order(s) with a Market Peg instruction with lower priority will not be converted, as described above, and the incoming order with a Post Only instruction will be posted or cancelled in accordance with Rule 11.6(n)(4).

The Exchange notes that orders with a Market Peg instruction are aggressive by nature and believes executing the order in such circumstance is appropriate. The Exchange also notes that the proposed behavior for orders with a Market Peg instruction in Test Groups One and Two is identical to the operation of orders with the Super Aggressive Routing instruction under Exchange Rule 11.6(n)(2). When an order with a Super Aggressive instruction is locked by an incoming order with a Post Only instruction that does not remove liquidity pursuant to Rule 11.6(n)(4), the order is converted to an executable order and will remove liquidity against such incoming order. In addition, like as proposed above, in no case would an order with a Super Aggressive instruction execute against an incoming order with a Post Only instruction if an order with higher priority is on the EDGA Book. The Exchange believes this change is reasonable and appropriate due to the limited usage of orders with a Market Peg instruction in Pilot Securities, to avoid unnecessary additional System complexity, and to ensure the order with a Market Peg instruction may execute in such circumstance.

The Exchange also proposes to not accept orders with a Market Peg instruction in Test Group Three based on limited current usage, additional System complexity, and their limited ability to execute under the Trade-at Prohibition. Exchange Rule 11.21(a)(6)(D) sets forth the "Trade-at Prohibition," which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours,[28] unless an enumerated exception applies.[29] The Exchange believes that their de minimis usage and limited ability to execute due to the Trade-at Prohibition does not justify the complexity that would be created by supporting orders with a Market Peg instruction in Test Group Three. A vast majority of orders with a Market Pegged instruction are entered into the System with a zero Offset and, therefore, create a locked market with the contra-side NBBO. Under the Trade-at Prohibition, an order with a Market Peg instruction would not be eligible for execution at the locking price, including when a Trade-at Intermarket Sweep Order ("ISO") [30] is entered, because of non-cleared contra-side Protected Quotations. For example, assume the NBBO is $10.00 (NYSE) × $10.05 (Nasdaq) in a Test Group 3 security. An order with a Market Peg instruction to buy at $10.10 with a zero Offset is entered on the Exchange. The order would be ranked and hidden on the EDGA Book at $10.05. A Trade-at ISO to sell at $10.05 is then entered. In this example, no execution occurs on the Exchange because Nasdaq is displaying an order to sell at $10.05. The Trade-at ISO instruction only indicates that all of the better and equal priced buy orders have been cleared. It does not indicate that the seller has cleared any Protected Offers. Therefore, the Exchange proposes to not accept orders with a Market Peg instruction in Test Group Three in an effort to reduce unnecessary System complexity, avoid an internally locked book, and due to the limited execution opportunities for orders with a Market Peg instruction due to the Trade-at Prohibition.

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[17] *See* Securities Exchange Act Release No. 77792 (May 10, 2016), 81 FR 30397 (May 16, 2016) (SR–BatsEDGA–2016–08).

[18] *See* Securities Exchange Act Release No. 77417 (March 22, 2016), 81 FR 17219 (March 28, 2016) (SR–BatsEDGA–2016–01).

[19] *See* Exchange Rule 11.8(a).

[20] *Id.*

[21] *See* Exchange Rule 11.6(j).

[22] *See* Exchange Rule 11.6(j)(1).

[23] A "User" is defined as any member or sponsored participant of the Exchange who is authorized to obtain access to the System pursuant to Rule 11.3. *See* Exchange Rule 1.5(ee).

[24] *See* Exchange Rule 11.6(n)(4).

[25] A Post Only Order will remove contra-side liquidity from the EDGA Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. *See* Exchange Rule 11.6(n)(4).

[26] The Exchange notes that an order with a Post Only instruction will, in most cases, remove liquidity from the EDGA Book because under its current taker-maker pricing structure, the remover of liquidity is provided a rebate while the provider of liquidity is charged a fee. Therefore, in most cases, value of the execution to remove liquidity will equal or exceed the value of such execution once posted to the EDGA Book, including the applicable fees charged or rebates received.

[27] The term "EDGA Book" is defined as the "System's electronic file of orders." *See* Exchange Rule 1.5(d).

MidPoint Peg Orders

A MidPoint Peg Order is an order whose price is automatically adjusted by the System in response to changes in the NBBO to be pegged to the midpoint of the NBBO, or, alternatively, pegged to the less aggressive of the midpoint of the NBBO or one Minimum Price Variation [31] inside the same side of the NBBO as the order.[32] The Plan and current Exchange rules permit the acceptance of orders priced to execute at the midpoint of the NBBO to be ranked and accepted in increments of less than $0.05.[33] Consistent with previous guidance issued by the Participants,[34] the Exchange proposes to amend the operation of MidPoint Peg Orders to explicitly state that MidPoint Peg Orders in Pilot Securities may not be entered in increments other than $0.05. The System will execute a MidPoint Peg Order: (i) In $0.05 increments priced better than the midpoint of the NBBO; or (ii) at the midpoint of the NBBO, regardless of whether the midpoint of the NBBO is in an increment of $0.05. In order to comply with the minimum quoting and trading increments of the Plan and reduce unnecessary System complexity, a MidPoint Peg Order will not be permitted to alternatively peg to one Minimum Price Variation inside the same side of the NBBO as the order in Pilot Securities. The Exchange believes that the current de minimis usage of the alternative pegging functionality in Pilot Securities does not justify the complexity and risk that would be created by re-programming the System to support this functionality under the Plan.

Discretionary Range Instruction

The Exchange proposes to not accept orders with a Discretionary Range in all Test Groups, including the Control Group, to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities. In sum, an order with a Discretionary Range has a displayed or non-displayed ranked price and size and an additional non-displayed "discretionary price".[35] The discretionary price is a non-displayed upward offset at which a User is willing to buy, if necessary, or a non-displayed downward offset at which a User is willing to sell, if necessary. The System changes necessary for orders with a Discretionary Range to comply with the Plan become increasingly complex because both the displayed price and discretionary price must comply with the Plan's minimum quoting and trading increments as well as the Trade-at restriction in Test Group Three. In addition, Users do not currently set discretionary prices less than $0.05 away from the order's displayed price and the Exchange does not anticipate Users doing so under the Plan. To date, orders with a Discretionary Range are rarely entered in Pilot Securities and the Exchange anticipates their usage to further decrease due to the Plan's minimum quoting increments. The Exchange believes that the current extremely limited usage of orders with a Discretionary Range in Pilot Securities does not justify the additional System complexity that would be created by supporting such orders. As a result of these factors the Exchange proposes to not accept orders with a Discretionary Range in all Test Groups and the Control Group.

Non-Displayed Instruction

The Exchange proposes to re-price to the midpoint of the NBBO orders with a Non-Displayed instruction in Test Group Three that are priced in a permissible increment better than the midpoint of the NBBO. An order with a Non-Displayed instruction is not displayed on the Exchange.[36] Exchange Rule 11.21(a)(6)(D) incorporates the "Trade-at Prohibition" in the Exchange's rules. The Trade-at Prohibition prevents the execution of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. A Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is a Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. Unless an exception applies, an order with a Non-Displayed instruction that is able to execute at the price of the Protected Quotation would not be able to do so in Test Group Three due to the Trade-at Prohibition and the Exchange's priority rule.[37] Furthermore, such aggressively priced orders would not be able to post to the EDGA Book at the contra-side Protected Quotation, and re-pricing the order to the midpoint of the NBBO would increase execution opportunities under normal market conditions. However, orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities for orders with a Non-Displayed instruction in Test Group Three, the Exchange proposes to re-price to the midpoint of the NBBO orders with a Non-Displayed instruction that are priced in a permissible increment better than the midpoint of the NBBO.

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[28] The term "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." *See* Exchange Rule 1.5(y).

[29] *See also* Section VI(D) of the Plan.

[30] A Trade-at ISO is a Limit Order for a Pilot Security that meets the following requirements: (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. *See* Exchange Rule 11.21(a)(7)(A)(i). These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. *Id.*

[31] *See* Exchange Rule 11.6(i).

[32] *See* Exchange Rule 11.8(d).

[33] *See* Sections VI(B), (C), and (D) of the Plan. *See also* Exchange Rules 11.21(a)(4), (a)(5), and (a)(6).

[34] *See e.g.,* Question 42 of the *Tick Size Pilot Program Trading and Quoting FAQs available at http://www.finra.org/sites/default/files/TSPP-Trading-and-Quoting-FAQs.pdf.*

[35] *See* Exchange Rule 11.6(d).

[36] *See* Exchange Rule 11.6(e)(2).

Market Maker Peg Orders

A Market Maker Peg Order is a Limit Order that is automatically priced by the System at the Designated Percentage (as defined in Exchange Rule 11.20(d)(2)(D)) away from the then current NBB and NBO, or if no NBB or NBO, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Exchange Rule 11.20(d).[38] Should the above pricing result in a Market Maker Peg Order being priced at an increment other than $0.05, the Exchange proposes to round an order to buy (sell) up (down) to the nearest $0.05 increment in order to comply with the minimum quoting increments of the Plan.

Supplemental Peg Orders

The Exchange proposes to not accept Supplemental Peg Orders in Test Group Three in order to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition. A Supplemental Peg Order is a non-displayed Limit Order that posts to the EDGA Book, and thereafter is eligible for execution at the NBB for buy orders and NBO for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price.[39] In sum, Supplemental Peg Orders are only executable at the NBBO against an order that is in the process of being routed away. In such case, the Exchange is not displaying a Protected Quotation and, therefore, the Supplemental Peg Order would be unable to execute in Test Group Three due to the Trade-at Prohibition.[40] Therefore, the Exchange proposes to not accept Supplemental Peg Orders in Test Group Three.

Display-Price Sliding

Under the Display-Price Sliding process, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market, will be ranked at the locking price in the EDGA Book and displayed by the System at one minimum price variation (*i.e.*, $0.05) below the current NBO (for bids) or one minimum price variation above the current NBB (for offers).[41] The ranked and displayed prices of an order subject to the Display-Price Sliding process may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO.[42]

As described above, Exchange Rule 11.21(a)(6)(D) sets forth the Trade-at Prohibition, which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. Orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities and qualify for the mid-point exception to the Trade-at Prohibition, the Exchange proposes to rank orders in Test Group Three that are subject to the Display-Price Sliding process at the midpoint of the NBBO in the BZX Book and display such orders one minimum price variation below the current NBO (for bids) or one minimum price variation above the current NBB (for offers).

The Exchange also proposes to cancel orders subject to Display-Price Sliding in Test Group Three that are only to be adjusted once and not multiple times in the event the NBBO widens and a contra-side order with a Non-Displayed instruction is resting on the EDGA Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to the increased minimum quoting increments under the Plan, the Exchange is unable to safely re-price an order subject to single Display-Price Sliding in Test Group Three to the original locking price in such circumstances and doing so would add additional System complexity and risk. As discussed above, the Exchange proposes to rank orders in Test Group Three subject to the Display-Price Sliding process at the midpoint of the NBBO. In the event the NBBO changes such that an order subject to Display-Price Sliding would not lock or cross a Protected Quotation of an external market, the order will receive a new timestamp, and will be displayed at the order's limit price.[43] Due to technological limitations arising from the increased minimum quoting increments under the Plan, however, the Exchange is unable to safely re-program its System to re-price such order to the original locking price when the NBBO widens and a contra-side order with a Non-Displayed instruction is resting on the EDGA Book at the price to which the order subject to Display-Price Sliding would be adjusted. Therefore, the Exchange proposes to cancel orders subject to the single Display-Price Sliding process in such circumstances. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process.

Ministerial Change

Currently, both Interpretation and Policy .03 to Rule 11.21(a) and Interpretation and Policy .11 to Rule 11.21(b) state that Rule 11.21 shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan). The Exchange proposes to include this language at the beginning of Rule 11.21 and, therefore, proposes to delete both Interpretation and Policy .03 to Rule 11.21(a) and Interpretation and Policy .11 to Rule 11.21(b) as those provisions would be redundant and unnecessary. The Exchange also proposes to amend the last sentence of Rule 11.21(a)(4) to specify that the current permissible price increments are set forth under Exchange Rule 11.6(i), Minimum Price Variation.

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[37] Under Exchange Rule 11.9(a)(2)(A), displayed Limit Orders have priority over non-displayed Limit Orders.

[38] *See* Exchange Rule 11.8(f).

[39] *See* Exchange Rule 11.8(g).

[40] The Exchange notes that the likelihood of a Supplemental Peg Order qualifying for an exception to the Trade-at Prohibition is small. For example, Supplemental Peg Orders are only executable against orders that are to be routed away and would not be eligible to execute against an incoming ISO or Trade-at ISO. Also, the Exchange would not be displaying a Protected Quotation. In addition, the Exchange does not frequently receive orders of Block Size and, in order to qualify for the Block exception, the contra-side Block Order must be routable and the Supplemental Peg Order be of Block Size.

[41] *See* Exchange Rule 11.6(l)(1)(B).

[42] *See* Exchange Rule 11.6(l)(1)(B)(iii).

[43] *Id.*

Implementation Date

If the Commission approves the proposed rule change, the proposed rule change will be effective upon Commission approval and shall become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[44] in general, and furthers the objectives of Section 6(b)(5) of the Act[45] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The proposed rule change is designed to comply with the Plan, reduce complexity and enhance System resiliency while not adversely affecting the data collected under the Plan. Therefore, the Exchange believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan and, as discussed further below, other applicable regulations.

The Exchange believes that the proposed changes regarding Market Orders, MidPoint Peg Orders, Market Maker Peg Orders, and Display-Price Sliding are consistent with the Act because they are intended to modify the Exchange's System to comply with the provisions of the Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that these proposals are intended to comply with the Plan, the Exchange believes that these proposals are in furtherance of the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

The Exchange also believes that its proposed changes to orders with a Market Peg instruction, orders with a Discretionary Range, orders with a Non-Displayed instruction, Supplemental Peg Orders, and Display-Price Sliding are also consistent with the Act because they are intended to eliminate unnecessary System complexity and risk based on the de minimis current usage of such order types and instructions in Pilot Securities and/or their limited ability to execute under the Plan's minimum trading and quoting increments or Trade-at Prohibition.[46] For example, during March 2016, the alternative pegging functionality of MidPoint Peg Orders, orders with a Market Peg instruction, orders with a Non-Displayed instruction, and Supplemental Peg Orders accounted for 0.01%, 0.02%, 0.92%, and 0.01%, respectively, of volume in eligible Pilot Securities on the Exchange, BYX, BZX and EDGX combined. Notably, orders with a Discretionary Range accounted for 0.00% of volume in eligible Pilot Securities on the Exchange, BYX, BZX and EDGX combined.

The Commission adopted Regulation Systems Compliance and Integrity ("Regulation SCI") in November 2014 to strengthen the technology infrastructure of the U.S. securities markets.[47] Regulation SCI is designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission's oversight and enforcement of securities market technology infrastructure. Regulation SCI required the Exchange to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act. Each of these proposed changes are intended to reduce complexity and risk in the System to ensure the Exchange's technology remains robust and resilient. In determining the scope of the proposed changes, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities.[48] The potential complexity results from code changes for a majority of the Exchange's order types, which requires the implementation and testing of a separate branch of code for each Test Group. For example, the Exchange currently utilizes one branch of code for which to implement and test changes. Development work for the Pilot results in the creation of four additional branches of code that are to be developed and tested (*e.g.,* Control Group + three Test Groups). The Exchange determined that the changes proposed herein are necessary to ensure continued System resiliency in accordance with the requirements of Regulation SCI. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In addition, each of these proposed changes would have a de minimis to zero impact on the data reported pursuant to the Plan. As evidenced above, orders with a Market Peg instruction, orders with a Discretionary Range, the alternative pegging functionality of MidPoint Peg Orders, and Supplemental Peg Orders are infrequently used in Pilot Securities or the execution of such orders would be scarce due to the Plan's minimum trading and quoting requirement and Trade-at Prohibition. The limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan. Therefore, the Exchange believes each proposed change is a reasonable means to ensure that the System's integrity, resiliency, and availability continues to promote the maintenance of fair and orderly markets. Due to the additional complexity, limited usage and execution opportunities, the Exchange believes it is not unfairly discriminatory to apply the changes proposed herein to only Pilot Securities as such changes are necessary to reduce complexity and ensure continued System resiliency in accordance with the requirements of Regulation SCI. The Exchange also believes the proposed changes to orders with a Non-Displayed instruction, and orders subject to the Display-Price

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[44] 15 U.S.C. 78f(b).

[45] 15 U.S.C. 78f(b)(5).

[46] The Commission has also expressed concern regarding potential market instability caused by technological risks. *See e.g.,* Chair Mary Jo White, Commission, *Enhancing Our Equity Market Structure* (June 5, 2014) *available at https://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y.*

[47] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) ("Regulation SCI Approval Order").

[48] But for the Plan, the Exchange notes that it would not have proposed to amend the operation of orders with a Market Peg instruction, orders with a Discretionary Range, orders with a Non-Displayed instruction, Supplemental Peg Orders, and Display-Price Sliding as described herein.

Sliding process in Test Group Three are consistent with the Act because they are designed to increase the execution opportunities for such order types in compliance with the mid-point exception to the Trade-at Prohibition. The Exchange also believes the proposed change to Market Pegged Orders in Test Groups One and Two is consistent with the Act because it is identical to the operation of the Super Aggressive instruction under Exchange Rule 11.6(n)(2). The Exchange notes that Market Pegged Orders are aggressive by nature and believes executing the order in such circumstance is reasonable and appropriate.

The Exchange also believes it is reasonable and appropriate to cancel an order subject to the single Display-Price Sliding process in Test Group Three in the event that the NBBO widens and a contra-side order with a Non-Displayed instruction is resting on the EDGA Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to technological limitations and the Plan's increased minimum quoting increments, the Exchange is unable to safely re-program its System to re-price such orders to the original locking price in such circumstances. The Exchange also anticipates that the scenario under which it proposes to cancel the Display-Price Sliding order will be infrequent in Tick Pilot Securities. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process. Therefore, the Exchange believes it is consistent with the Act to set forth this scenario in its rules so that Users will understand how the System operates and how their orders would be handled in this discrete scenario.

Lastly, the Exchange believes the ministerial changes to Rule 11.21 are also consistent with the Act as they would: (i) Clarify a provision under paragraph (a)(4); and (ii) remove redundant provisions from the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan, reduce System complexity and enhance resiliency. The Exchange also notes that the proposed rule change will apply equally to all Members that trade Pilot Securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on the issue described below.

In the Approval Order, the Commission stressed the importance of testing the impact of wider tick sizes on the trading and liquidity of the securities of small capitalization companies, and doing so in a way that produces robust results that inform future policy decisions.[49] The Commission acknowledged the complexity of the Pilot and the costs that its implementation would create for market participants, but concluded that the benefits of the empirical data that would be produced by the Pilot warranted incurring those costs.[50] As a result, the Plan requires that each Participant, including the Exchange, adopt rules that are necessary for compliance with the provisions of the Plan.[51]

While the Exchange states that the proposed rule change describes the system changes necessary to implement the Pilot, the Commission notes that the scope of the proposed changes extends beyond those required for compliance with the Plan, and would eliminate certain order types for Pilot Securities during the Pilot Period, or modify their operation in ways not required by the Plan. For example, the Exchange proposes not to accept Market Pegged Orders, Discretionary Orders, and Supplemental Peg Orders, and certain types of Mid-Point Peg Orders, in some or all Test Groups of Pilot Securities for the duration of the Pilot Period.[52] These proposals appear designed to permit the Exchange to avoid the costs of modifying these order types to comply with the Plan. The Exchange notes that these order types are infrequently used in Pilot Securities, and takes the position that "[t]he limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan." [53] At the same time, the Exchange also does not appear prepared to propose to eliminate these order types indefinitely. By contrast, the Exchange proposes to modify, in ways not required by the Plan, the operation of Market Pegged Orders and Non-Displayed Orders, and certain orders subject to the Display-Price Sliding process, in some or all Test Groups of Pilot Securities, and to incur the associated system change costs, in order to increase the "execution opportunities" for these order types for the duration of the Pilot Period.[54]

The Commission is concerned that proposed rule changes, other than those necessary for compliance with Plan, that are targeted at Pilot Securities, that have a disparate impact on different Test Groups and the Control Group, and that are to apply temporarily only for the Pilot Period, could bias the results of the Pilot and undermine the value of the data generated in informing future policy decisions. Accordingly, the Commission is concerned that the proposed rule change may not be consistent with Act, including Section 6(b)(5) thereof and Rule 608 of Regulation NMS, or with the Plan.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGA–2016–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

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[49] *See* Approval Order, *supra* note 4, at 80 FR 27515.

[50] *Id.* at 27516.

[51] *See* Section II(B) of the Plan. *See* also Section IV of the Plan.

[52] The Exchange also proposes to cancel certain orders subject to the Display-Price Sliding process in certain Pilot Securities for the duration of the Pilot Period.

[53] *See supra* Item II.A.2.

[54] *See supra* Item II.A.1–2.

Commission, 100 F Street NE.,
Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGA–2016–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2016–15, and should be submitted on or before August 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17090 Filed 7–19–16; 8:45 am]

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[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78327; File No. SR–FINRA–2016–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update Rule Cross-References and Make Non-Substantive Technical Changes to Certain FINRA Rules

July 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 7, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to update cross-references and make other non-substantive changes within FINRA rules, due in part to the adoption of a new consolidated FINRA rule.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 17 CFR 240.19b-4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA has been developing a consolidated rulebook ("Consolidated FINRA Rulebook").[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive changes in the Consolidated FINRA Rulebook.

The proposed rule change would make some of those changes, as well as other non-substantive changes unrelated to the adoption of rules in the Consolidated FINRA Rulebook.

First, the proposed rule change would update rule cross-references to reflect the adoption of a consolidated investment company securities rule. On June 9, 2016, FINRA filed with the SEC a proposed rule change, for immediate effectiveness, to adopt NASD Rule 2830 as FINRA Rule 2341 (Investment Company Securities), without any substantive changes. As part of that rule filing, FINRA also deleted in its entirety NASD Rule 2830.[5] Rule 2341 will be implemented on July 9, 2016. As such, the proposed rule change would update references to the new rule number in FINRA Rules 2320 (Variable Contracts of an Insurance Company) and 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities). The proposed rule change further would delete from the FINRA Manual the heading for the NASD Rule 2800 Series (Special Products) and the placeholder for NASD Rule 2870 (Reserved) to reflect that the NASD Rule 2800 Series[6] has fully been consolidated into the FINRA rules.

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[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 78130 (June 22, 2016), 81 FR 42016 (June 28, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2016–019).

[6] *See supra* note 5.

Second, the proposed rule change would make technical changes to FINRA Rules 6191 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot Program)[7] and 7440 (Recording of Order Information)[8] to reflect FINRA Manual style convention changes and correct paragraph numbering. FINRA would also merge the Supplementary Material in Rule 6191(a) with and into the Supplementary Material in Rule 6191(b) to reflect FINRA Manual style convention.[9]

Finally, the proposed rule change would also delete from FINRA Funding Portal Rule 100 the reference to FINRA Dispute Resolution, Inc. to reflect the merger of FINRA Dispute Resolution, Inc. into and with FINRA.[10]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so that FINRA can implement the proposed rule change to coincide with the effective dates of the affected rules. The implementation date for the proposed changes to FINRA Rules 2320 and 6630, Funding Portal Rule 100, and the proposed deletion of the NASD Rule 2800 Series heading and NASD Rule 2870 will be July 9, 2016. The implementation date for the changes to FINRA Rules 6191 and 7440 will be October 3, 2016 and August 1, 2016, respectively, to coincide with the implementation date of the rules.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

Under Rule 19b–4(f)(6) of the Act,[14] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative on filing. FINRA stated that the proposed rule change updates cross-references and makes no substantive changes, and it would like to implement the change to coincide with the effective dates of the affected rules. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2016–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–026, and should be submitted on or before August 10, 2016.

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[7] *See* Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Order Approving File No. SR–FINRA–2015–048); *see also* Securities Exchange Act Release No. 77218 (February 23, 2016), 81 FR 10290 (February 29, 2016) (Order Approving File No. SR–FINRA–2015–047).

[8] *See* Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Order Approving File No. SR–FINRA–2015–048) and Securities Exchange Act Release No. 77523 (April 5, 2016), 81 FR 21427 (April 11, 2016) (Order Approving File No. SR–FINRA–2016–006).

[9] *See supra* note 7.

[10] *See* Securities Exchange Act Release No. 76670 (December 16, 2015), 80 FR 79632 (December 22, 2015) (Order Approving File No. SR–FINRA–2015–034).

[11] 15 U.S.C. 78*o*-3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.*

[15] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17097 Filed 7–19–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9645]

Culturally Significant Objects Imported for Exhibition Determinations: "Valentin de Boulogne: Beyond Caravaggio" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Valentin de Boulogne: Beyond Caravaggio," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art New York, New York, from on or about October 6, 2016, until on or about January 16, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 11, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–17147 Filed 7–19–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9640]

Memorandum of Agreement Between the U.S. Department of State Bureau of Consular Affairs and the Council on Accreditation

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State (the Department) is the lead Federal agency for implementation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention), the Intercountry Adoption Act of 2000 (IAA), and the Intercountry Adoption Universal Accreditation Act of 2012 (UAA). Among other things, the IAA and UAA give the Secretary of State responsibility, by entering into agreements with one or more qualified entities and designating such entities as accrediting entities, for the accreditation of agencies and approval of persons to provide adoption services in intercountry adoptions. This notice is to inform the public that on July 11, 2016, the Department entered into an agreement with the Council on Accreditation (COA) designating COA as an accrediting entity (AE) for an additional five years.

The Memorandum of Agreement between the U.S. Department of State Bureau of Consular Affairs and the Council on Accreditation (2016 MOA) remains largely consistent with the terms of the MOA signed on July 12, 2006 by Maura Harty, Assistant Secretary for Consular Affairs, U.S. Department of State and signed on July 6, 2006 by Richard Klarberg, President and Chief Executive Officer, COA. However, the 2016 MOA has been updated to reflect enactment of the UAA and to remove obsolete references, while further refining the role and responsibilities of the accrediting entity and taking into account subsequent updates to the intercountry adoption accreditation regulations in 22 CFR part 96. The text of the 2016 MOA is included in its entirety at the end of this Notice.

FOR FURTHER INFORMATION CONTACT: Valerie Barlow at 202–485–6347. Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department, pursuant to section 202(a) of the IAA, must enter into an agreement with at least one qualified entity and designate it as an accrediting entity. Accrediting entities may be (1) nonprofit private entities with expertise in developing and administering standards for entities providing child welfare services; or (2) state adoption licensing bodies that have expertise in developing and administering standards for entities providing child welfare services and that accredit only agencies located in that state. Both nonprofit accrediting entities and state accrediting entities must meet any other criteria that the Department may by regulation establish. COA is a nonprofit private entity with expertise in developing and administering standards for entities providing child welfare services throughout the United States.

The final rule on accreditation of agencies and approval of persons (22 CFR part 96) was published in the **Federal Register** (71 FR 8064–8066, February 15, 2006) and became effective on March 17, 2006. The final rule establishes the regulatory framework for the accreditation and approval function and provides the standards that the designated accrediting entities will follow in accrediting or approving adoption service providers. Under the UAA, adoption service providers working with prospective adoptive parents in non-Convention adoption cases need to comply with the same accreditation requirement and standards that apply in Convention adoption cases.

Through the Department's ongoing monitoring and oversight of COA, which includes an annual performance review, the Department observed that COA's performance of its duties as an accrediting entity is in substantial compliance with the IAA, UAA and regulations set forth in Title 22 of the Code of Federal Regulations, part 96. Therefore, the Department has renewed the designation of COA as an AE.

Memorandum of Agreement Between the Department of State Bureau of Consular Affairs and the Council on Accreditation

Parties & Purpose of the Agreement

The Department of State, Bureau of Consular Affairs (Department), and the Council on Accreditation (COA), with its principal office located at 45 Broadway, 29th floor, New York, NY

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[16] 17 CFR 200.30–3(a)(12).

10006, hereinafter the "Parties," are entering into this agreement for the purpose of designating COA as an accrediting entity under the Intercountry Adoption Act of 2000 (IAA), Public Law 106–279, and 22 CFR part 96.

Authorities

The Department enters into this agreement pursuant to Sections 202 and 204 of the IAA, 22 CFR part 96, and Delegation of Authority 261. COA has full authority to enter into this MOA pursuant to a resolution passed by its Board of Trustees dated July 6, 2016, which resolution authorizes Richard Klarberg as its President & CEO to execute this agreement on behalf of COA.

Definitions

For purposes of this memorandum of agreement, terms used here that are defined in 22 CFR 96.2 shall have the same meaning as they have in 22 CFR 96.2.

The Parties AGREE AS FOLLOWS:

Article 1

Designation of the Accrediting Entity

The Department hereby designates COA as an accrediting entity and thereby authorizes it to accredit agencies and approve persons to provide adoption services in intercountry adoption cases, in accordance with the procedures and standards set forth in 22 CFR part 96, and to perform all of the accrediting entity functions set forth in 22 CFR 96.7(a).

Article 2

Accreditation Responsibilities and Duties of the Accrediting Entity

(1) COA agrees to perform all accrediting entity functions set forth in 22 CFR 96.7(a) and to perform its functions in accordance with the Convention, the IAA, the Intercountry Adoption Universal Accreditation Act of 2012 (UAA), Public Law 112–276, Part 96 of 22 CFR, and any other applicable regulations, and as additionally specified in this agreement. In performing these functions, COA will operate under policy direction from the Department regarding U.S. obligations under the Convention and regarding the functions and responsibilities of an accrediting entity under the IAA, UAA, and any other applicable regulations.

(2) COA will take appropriate staffing, funding, and other measures to allow it to carry out all of its functions and fulfill all of its responsibilities, and will use the adoptions tracking system and the Complaint Registry (ATS/CR) as directed by the Department, including by updating required data fields in a timely fashion.

(3) In carrying out its accrediting entity functions COA will:

(a) Make decisions on accreditation and approval in accordance with the procedures set forth in 22 CFR part 96 and using only the standards in subpart F of 22 CFR part 96 and the substantial compliance weighting system approved by the Department pursuant to para. 5, Article 3 below;

(b) charge applicants for accreditation or approval only fees approved by the Department pursuant to para. 4, Article 3 below;

(c) review complaints, including complaints regarding conduct alleged to have occurred overseas, in accordance with subpart J of 22 CFR part 96 and the additional procedures approved by the Department pursuant to paragraphs 3(c) and 3(d) in Article 3, below. COA will exercise its discretion in determining which methods are most appropriate to review complaints regarding conduct alleged to have occurred overseas. This may, when appropriate, include a referral to the Department and/or other appropriate law enforcement authorities for potential investigation of complaints relating to possible civil or criminal violation of IAA section 404 or other possible criminal activity;

(d) take adverse actions against accredited agencies and approved persons in accordance with subpart K of 22 CFR part 96, and cooperate with the Department in any case in which the Department considers exercising its adverse action authorities because the accrediting entity has failed or refused after consultation with the Department to take what the Department considers to be appropriate enforcement action;

(e) assume full responsibility for defending adverse actions in court proceedings, if challenged by the adoption service provider or the adoption service provider's board or officers;

(f) refer an adoption service provider to the Department for debarment if, but only if, it concludes after review that the adoption service provider's conduct meets the standards for action by the Secretary set out in 22 CFR 96.85;

(g) promptly report any change in the accreditation or approval status of an adoption service provider to the relevant state licensing authority;

(h) maintain and use only the required procedures approved by the Department and those procedures presented to the Department pursuant to Article 3 of this agreement whenever they apply;

(i) COA may consult with the Department, when needed, to solicit greater clarity regarding the meaning of relevant laws and regulations.

Article 3

Training, Procedures, and Fees

(1) *Accreditation Materials and Training:* In coordination with the Department and any other designated accrediting entities, COA will:

(a) Maintain forms, training materials, and evaluation practices;

(b) assist in conducting or participate in any joint training sessions;

(c) develop and maintain resources to assist applicants for accreditation and approval in achieving substantial compliance with the applicable standards.

(2) *Internal Review Procedure:* COA will maintain procedures that have been approved by the Department and use these procedures to determine whether to terminate adverse actions against an accredited agency or approved person on the grounds that the deficiencies necessitating the adverse action have been corrected.

(3) *Other Procedures:* COA will maintain procedures approved by the Department and update these, subject to the Department's approval, as needed:

(a) To evaluate whether a candidate for accreditation meets the applicable eligibility requirements set forth in 22 CFR part 96;

(b) to carry out its annual monitoring duties;

(c) to review complaints or information referred to it through the Complaint Registry or from the Department directly;

(d) to review complaints that it receives about its own actions as an accrediting entity for adoption service providers;

(e) to make the public disclosures required by 22 CFR 96.91; and

(f) to ensure the reasonableness of charges for the travel and maintenance of its site evaluators, such as for travel, meals, and accommodations, which charges shall be in addition to the fees charged under 22 CFR 96.8.

(4) *Fee Schedule:*

(a) COA will maintain a fee schedule for accreditation and approval services that meets the requirements of 22 CFR 96, and update these, subject to approval by the Department. Fees will be set based on the principle of recovering no more than the full cost, as defined in OMB Circular A–25 paragraph 6(d)(1), of accreditation and approval services. COA will maintain a fee schedule developed using this methodology together with comprehensive documentation, and will provide justification of the proposed fees to the Department for the Department's approval.

(b) The approved fee schedule can be amended with the approval of the Department.

(5) *Substantial Compliance Weighting Systems:*

(a) COA will maintain and update a substantial compliance weighting system as described in 22 CFR 96 and as approved by the Department.

(b) In maintaining the systems described in paragraph (a) of this section, COA will coordinate with any other accrediting entities, and consult with the Department to ensure consistency between the systems used by accrediting entities. These systems can be amended with the approval of the Department.

Article 4

Data Collection, Reporting and Records

(1) *Adoptions Tracking System/Complaint Registry (ATS/CR):*

(a) COA will maintain and fund a computer and internet connection for use with the ATS/CR that meets system requirements set by the Department;

(b) The Department will provide software or access tokens needed by individuals for secure access to the ATS/CR and facilitate any necessary training for use of the ATS/CR.

(2) *Annual Report:* COA will report on dates agreed upon by the Parties, in a mutually agreed upon format, the information required in 22 CFR 96.93 as provided in that section through ATS/CR.

(3) *Additional Reporting:* COA will provide any additional status reports or data as reasonably required by the Department, and in a mutually agreed upon format.

(4) *Accrediting Entity Records:* COA will retain all records related to its accreditation functions and responsibilities in printed or electronic form in accordance with the electronic recordkeeping policy that applies to Federal acquisition contracts under Federal Acquisition Regulation 4.703 for a minimum of six years after their creation, or until any litigation, claim, or audit related to the records filed or noticed within the six-year period is finally terminated, whichever is longer.

Article 5

Department Oversight and Monitoring

(1) To facilitate oversight and monitoring by the Department, COA will:

(a) Provide copies of its forms and other materials to the Department and give Department personnel the opportunity to participate in any training sessions for its evaluators or other personnel;

(b) allow the Department to inspect all records relating to its accreditation functions and responsibilities and provide to the Department copies of such records as requested or required for oversight, including to evaluate renewal or maintenance of the accrediting entity's designation, and for purposes of transferring adoption service providers to another accrediting entity;

(c) submit to the Department by a date agreed upon by the Parties an annual declaration signed by the President and Chief Executive Officer confirming that COA is complying with the IAA, UAA, 22 CFR part 96, any other applicable regulations, and this agreement in carrying out its functions and responsibilities;

(d) make appropriate senior-level officers available to attend a yearly performance review meeting with the Department;

(e) immediately report to the Department events that have a significant impact on its ability to perform its functions and responsibilities as an accrediting entity, including financial difficulties, changes in key personnel or other staffing issues, legal or disciplinary actions against the organization, and conflicts of interest;

(f) notify the Department of any requests for information relating to its role as an accrediting entity under the IAA and UAA or Department functions or responsibilities that it receives from Central Authorities of other countries that are party to the Convention, or any other competent authority (except for routine requests concerning accreditation, temporary accreditation, or approval status or other information publicly available under subpart M of Part 96), and consult with the Department before releasing such information;

(g) consult immediately with the Department about any issue or event that may affect compliance with the IAA, UAA, or U.S. compliance with obligations under the Convention.

(2) *Departmental Approval Procedures:* In all instances in which the Department must approve a policy, system, fee schedule, or procedure before COA can bring it into effect or amend it, COA will submit the policy, system, fee schedule, or procedure or amendment in writing to the Department's AE Liaison via email where possible. The AE Liaison will coordinate the Department's approval process and arranging any necessary meetings or telephone conferences with COA. Formal approval by the Department will be expeditiously conveyed in writing by the Deputy Assistant Secretary for Overseas Citizens Services or her or his designee.

(3) *Suspension or Cancellation:* When the Department is considering suspension or cancellation of COA's designation:

(a) The Department will notify COA in writing of the identified deficiencies in its performance and the time period in which the Department expects correction of the deficiencies;

(b) COA will respond in writing to either explain the actions that it has taken or plans to take to correct the deficiencies or to demonstrate that the Department's concerns are unfounded within 10 business days;

(c) upon request, the Department also will meet with the accrediting entity by teleconference or in person;

(d) if the Department, in its sole discretion, is not satisfied with the actions or explanation of COA, it will notify COA in writing of its decision to suspend or cancel COA's designation and this agreement;

(e) COA will stop or suspend its actions as an accrediting entity as directed by the Department in the notice of suspension or cancellation, and cooperate with any Departmental instructions in order to transfer adoption service providers it accredits (including temporarily accredits) or approves to another accrediting entity, including by transferring fees collected by COA for services not yet performed.

(4) COA will follow its procedures for reviewing complaints against COA received by the Department or referred to the Department because the complainant was not satisfied with COA's resolution of the complaint. These complaint procedures may be incorporated into the Department's general procedures for handling instances in which the Department is considering whether a deficiency in the accrediting entity's performance may warrant suspension or cancellation of its designation.

Article 6

Other Issues Agreed by the Parties

(1) *Conflict of interest provisions:*

(a) COA shall disclose to the Department the name of any organization of which it is a member that also has as members intercountry adoption service providers. COA shall demonstrate to the Department that it has procedures in place to prevent any such membership from influencing its actions as an accrediting entity and shall maintain and use these procedures.

(b) COA shall identify for the Department all members of its board of directors or other governing body, employees, and site evaluators who also serve as officers, directors, employees, or owners of adoption service providers. COA shall demonstrate it has procedures in place to ensure that any such relationships will not influence any accreditation or approval decisions, and shall maintain and use these procedures.

(c) COA shall disclose to the Department any other situation or circumstance that may create the appearance of a conflict of interest.

(2) *Liability:* COA agrees to maintain sufficient resources to defend challenges to its actions as an accrediting entity, including by maintaining liability insurance for its actions as an accrediting entity brought by agencies and/or persons seeking to be accredited or approved or who are accredited or approved, and to inform the Department immediately of any events that may affect its ability to defend itself (*e.g.,* change in or loss of insurance coverage, change in relevant state law). COA agrees that it will consult with the Department immediately if it becomes aware of any other legal proceedings related to its acts as an accrediting entity, or of any legal proceedings not related to its acts as an accrediting entity that may threaten its ability to continue to function as an accrediting entity.

Article 7

Liaison Between the Department and the Accrediting Entity

(1) COA's principal point of contact for communications relating to its functions and duties as an accrediting entity will be the Director of Intercountry Adoption Accreditation. The Department's principal point of contact for communication is the Accrediting Entity Liaison officer in the Office of Children's Issues, Office of Overseas Citizens Services, Bureau of Consular Affairs, U.S. Department of State.

(2) The parties will keep each other currently informed in writing of the names and contact information for their principal points of contact. As of the signing of this Agreement, the respective principal points of contact are as set forth in Attachment 1.

Article 8

Certifications and Assurances

(1) COA certifies that it will comply with all requirements of applicable State and Federal law.

Article 9

Agreement, Scope, and Period of Performance

(1) *Scope:*

(a) This agreement is not intended to have any effect on any activities of COA that are not related to its functions as an accrediting entity for adoption service providers providing adoption services in intercountry adoptions.

(b) Nothing in this agreement shall be deemed to be a commitment or obligation to provide any Federal funds.

(c) All accrediting entity functions and responsibilities authorized by this agreement are to occur only during the duration of this agreement.

(d) Nothing in this agreement shall release COA from any legal requirements or responsibilities imposed on the accrediting entity by the IAA, UAA, 22 CFR part 96, or any other applicable laws or regulations.

(2) *Duration:* COA's designation as an accrediting entity and this agreement shall remain in effect for five years from signature, unless terminated earlier by the Department in conjunction with the suspension or cancellation of the designation of COA. The Parties may agree mutually in writing to extend the designation of the accrediting entity and the duration of this agreement. If either Party does not wish to renew the agreement, it must provide written notice no less than one year prior to the termination date, and the Parties will consult to establish a mutually agreed schedule to transfer adoption service providers to another accrediting entity, including by transferring a reasonable allocation of collected fees for the remainder of the accreditation or approval period of such adoption service providers.

(3) *Changed Circumstances:* If unforeseen circumstances arise that will render COA unable to continue to perform its duties as an Accrediting Entity, COA will immediately inform the Department of State. The Parties will consult and make an effort to find a solution that will enable COA to continue to perform until the end of the contract period. If no such solution can be reached, the contract may be terminated on a mutually agreed date or, if mutual agreement cannot be reached, on not less than 14 months written notice from COA.

(4) *Severability:* To the extent that the Department determines, within its reasonable discretion, that any provision of this agreement is inconsistent with the Convention, the IAA, the UAA, the regulations implementing the IAA and UAA, or any other provision of law, that provision of the agreement shall be considered null and void and the remainder of the agreement shall continue in full force and effect as if the offending portion had not been a part of it.

(5) *Entirety of Agreement:* This agreement is the entire agreement of the Parties and may be modified only upon written agreement of the Parties.

Dated: July 11, 2016.

Michele Thoren Bond,

Assistant Secretary for Consular Affairs, U.S. Department of State.

[FR Doc. 2016–17143 Filed 7–19–16; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 9641]

60-Day Notice of Proposed Information Collection: Application To Determine Returning Resident Status

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to September 19, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Docket Number: DOS–2016–0046" in the Search field. Then click the "Comment Now" button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.* You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Lage, who may be reached at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application to Determine Returning Resident Status.
- *OMB Control Number:* 1405–0091.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–0117.
- *Respondents:* Immigrant Visa Petitioners.
- *Estimated Number of Respondents:* 4,400.
- *Estimated Number of Responses:* 4,400.
- *Average Time per Response:* 30 Minutes.
- *Total Estimated Burden Time:* 2,200 Hours.
- *Frequency:* Once.
- *Obligation to respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: Under INA Section 101(a)(27)(A)[8 U.S.C. 1101], Form DS–0117 is used by consular officers to determine the eligibility of an alien applicant for special immigrant status as a returning resident because he or she remained out of the United States for more than one year because of circumstances outside of his or her control.

Methodology: The DS–0117 is available online. Applicants will fill out the application online, print the form, and submit the DS–0117 during their interview at a Consular Post.

Karin King,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–17144 Filed 7–19–16; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 9639]

Notice of Receipt of Application for a Presidential Permit for the Pembina-Emerson Land Port of Entry Expansion Project on the U.S.-Canada Border at Pembina, North Dakota, and Emerson, Manitoba, Canada

SUMMARY: The Department of State hereby gives notice that, on May 24, 2016, it received an application for a Presidential Permit to expand the Pembina-Emerson Land Port of Entry (LPOE) on the U.S.-Canada Border at Pembina, North Dakota, and Emerson, Manitoba, Canada. The North Dakota Department of Transportation filed this application. The Department of State's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the Department is circulating this application to relevant federal agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether issuance of a Presidential Permit for the proposed expansion of this border crossing would serve the national interest. Interested members of the public are invited to submit written comments regarding this application on or before October 31, 2016, to the U.S.-Canada Border Affairs Officer, via email at *CanadaPresidentialPermits@state.gov* or by mail at WHA/CAN—Room 3918, Department of State, 2201 C St. NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Contact the Canada Border Affairs Officer via email at *CanadaPresidentialPermits@state.gov,* by phone at 202 647–2170, or by mail at Office of Canadian Affairs—Room 3918, Department of State, 2201 C St. NW., Washington, DC 20520. Information about Presidential permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/.*

SUPPLEMENTARY INFORMATION: The application and supporting documents are available for review at *http://www.state.gov/p/wha/rt/permit/canada/index.htm.*

Dated: July 14, 2016.

Keith Gilges,

Acting Deputy Director, WHA/CAN, Department of State.

[FR Doc. 2016–17152 Filed 7–19–16; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 9644]

Culturally Significant Objects Imported for Exhibition Determinations: "Della Robbia: Sculpting With Color in Renaissance Florence" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Della Robbia: Sculpting with Color in Renaissance Florence," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Massachusetts, from on or about August 9, 2016, until on or about December 4, 2016; National Gallery of Art, Washington, District of Columbia, from on or about February 5, 2017, until on or about June 4, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 11, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–17150 Filed 7–19–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9642]

Culturally Significant Objects Imported for Exhibition Determinations: "No Limits: Zao Wou-Ki" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "No Limits: Zao Wou-Ki," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Asia Society, New York, New York, from on or about September 9, 2016, until on or about January 8, 2017; Colby College Museum of Art, Waterville, Maine, from on or about February 4, 2017, until on or about June 4, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 11, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–17148 Filed 7–19–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Statute of Limitations on Claims, Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 326.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, New River Bike Path [Federal Aid Number HPLUL–5168(015)] in the City of Calexico, in the County of Imperial, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 19, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Kevin Hovey, Chief, Environmental Branch D, California Department of Transportation—District 11, 4050 Taylor Street, San Diego, CA 92110, 8 a.m. to 5 p.m., 619–688–0240, *kevin.hovey@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective May 21, 2007 and renewed May 31, 2016, FHWA assigned, and Caltrans assumed, all environmental responsibilities for this project pursuant to 23 U.S.C. 326 CE Assignment Memorandum of Understanding. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California. The City of Calexico proposes to construct a 2.4-mile bike trail along New River, between West 2nd Avenue/Animal Shelter Drive to A.M. Thielemann Avenue, HPLU–5168(015). The proposed project would also include the creation of landscaped overlooks at various locations and construction of a bicycle/pedestrian bridge over New River near the trail's proposed West 2nd Avenue/Animal Shelter Drive eastern entrance. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Categorical Exclusion (CE) for the project, approved on June 27, 2016 and in other documents in the FHWA project records. The CE and other project records are available by contacting Caltrans at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Moving Ahead for Progress in the 21st Century Act (MAP–21);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Department of Transportation Act of 1966, Section 4(f);
8. Clean Water Act of 1977 and 1987;
9. Endangered Species Act of 1973;
10. Migratory Bird Treaty Act;
11. National Historic Preservation Act of 1966, as amended;
12. Historic Sites Act of 1935;
13. Executive Order 11990, Protection of Wetlands
14. Executive Order 13112, Invasive Species; and,
15. Executive Order 11988, Floodplain Management.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. § 139(*l*)(1)

Dated: July 6, 2016.

Lismary Gavillán,

Transportation Engineer, Federal Highway Administration, Los Angeles, California.

[FR Doc. 2016–17116 Filed 7–19–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (PRA).

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. On April 14, 2016, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend, with revision, the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a), which are currently approved collections of information. The comment period for this notice expired on June 13, 2016. The agencies received one comment letter. The agencies are now submitting a request to OMB for review and approval of the extension, with revision, of the FFIEC 009 and FFIEC 009a. The proposed revisions would take effect September 30, 2016.

DATES: Comments must be submitted on or before August 19, 2016.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible, to *prainfo@occ.treas.gov.* Alternatively, comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0100 (FFIEC 009 and FFIEC 009a), 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to 571–465–4326.

You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling 202–649–6700 or for persons who are deaf or hard of hearing, TTY, 202–649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: You may submit comments, which should refer to FFIEC 009 and FFIEC 009a, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the reporting form numbers in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "FFIEC 009 and FFIEC 009a," by any of the following methods:

- *Agency Web site: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov.* Include "FFIEC 009 and FFIEC 009a" in the subject line of the message.
- *Mail:* Manuel E. Cabeza, Counsel, Room MB–3105, Attn: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at 877–275–3342 or 703–562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to 202–395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the FFIEC 009 and FFIEC 009a reporting forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Shaquita Merritt, OCC Clearance Officer, 202–649–5490, or for persons who are deaf or hard of hearing, TTY, 202–649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, 202–452–3884, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869.

FDIC: Manuel E. Cabeza, Counsel, 202–898–3767, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to request approval from OMB of the extension for three years, with revision, of the following currently approved collection of information:

Report Titles: Country Exposure Report and Country Exposure Information Report.

Form Numbers: FFIEC 009 and FFIEC 009a.

Frequency of Response: Quarterly.

Affected Public: Business or other for profit.

OCC

OMB Control No.: 1557–0100.

Estimated Number of Respondents: 16 (FFIEC 009), 9 (FFIEC 009a).

Estimated Average Burden per Response: 131 hours (FFIEC 009), 6 hours (FFIEC 009a).

Estimated Total Annual Burden: 8,384 hours (FFIEC 009), 216 hours (FFIEC 009a).

Board

OMB Control No.: 7100–0035.

Estimated Number of Respondents: 45 (FFIEC 009), 33 (FFIEC 009a).

Estimated Average Burden per Response: 131 hours (FFIEC 009), 6 hours (FFIEC 009a).

Estimated Total Annual Burden: 23,580 hours (FFIEC 009), 792 hours (FFIEC 009a).

FDIC

OMB Control No.: 3064–0017.

Estimated Number of Respondents: 17 (FFIEC 009), 9 (FFIEC 009a).

Estimated Average Burden per Response: 131 hours (FFIEC 009), 6 hours (FFIEC 009a).

Estimated Total Annual Burden: 8,908 hours (FFIEC 009), 216 hours (FFIEC 009a).

Legal Basis for the Information Collection

These information collections are mandatory under the following statutes: 12 U.S.C. 161 and 1817 (national banks), 12 U.S.C. 1464 (federal savings associations), 12 U.S.C. 248(a)(1) and (2), 1844(c), and 3906 (state member banks and bank holding companies); 12 U.S.C. 1467a(b)(2)(A) (savings and loan holding companies); 12 U.S.C. 5365(a) (intermediate holding companies); and 12 U.S.C. 1817 and 1820 (insured state nonmember commercial and savings banks and insured state savings associations). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment.

General Description of Reports

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks, savings associations, bank holding companies, and savings and loan holding companies that is used for supervisory and analytical purposes. The information is used to monitor the foreign country exposures of reporting institutions to determine the degree of risk in their portfolios and assess the potential risk of loss. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of 1 percent of total assets or 20 percent of capital, whichever is less) of U.S. banks, savings associations, bank holding companies, and savings and loan holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions also must furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

Current Actions

On April 14, 2016, the agencies published a notice in the **Federal Register** (81 FR 22163) and requested comment on a proposal to revise the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a) effective September 30, 2016, to (1) have institutions provide their Legal Entity Identifier (LEI) on both reporting forms, only if they already have one, and (2) add Intermediate Holding Companies (IHCs) to the Board's respondent panel. The comment period for this notice expired on June 13, 2016.

The agencies received one comment letter from a bankers' association indicating that it would submit data on certain divergent reporting practices observed across institutions with respect to the FFIEC 009 and FFIEC 009a in a supplemental submission. The letter did not comment on either of the changes proposed by the agencies. Any forthcoming data and comments on the FFIEC 009 and FFIEC 009a reporting requirements from this association would be considered for possible inclusion in a separate future notice of agency information collection activities. The agencies are now submitting a request to OMB for review and approval of the extension, with revision, of the FFIEC 009 and FFIEC 009a that incorporates the two changes proposed in the April 14 notice.

Request for Comment

The agencies invite comment on the following topics related to this collection of information:

(a) Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: July 14, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, July 13, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 13th day of July, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–17154 Filed 7–19–16; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P 6714–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 139 July 20, 2016

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 140912776–6553–02]

RIN 0648–BE53

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations governing related Letters of Authorization (LOAs) in response to a request from Apache Alaska Corporation (Apache) for authorization to take marine mammals, by harassment, incidental to its oil and gas exploration seismic survey program in Cook Inlet, Alaska. This action will put the applicant into compliance with the Marine Mammal Protection Act (MMPA) and minimize impacts to marine mammals in Cook Inlet.

DATES: Effective August 19, 2016 through July 20, 2021.

ADDRESSES: An electronic copy of the application, containing a list of references used in this document, and the associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427–8484.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On July 11, 2014, NMFS received a complete application from Apache requesting authorization for the take of nine marine mammal species incidental to an oil and gas exploration seismic program in Cook Inlet, AK, over the course of 5 years. On February 23, 2015, NMFS published a notice in the **Federal Register** of our proposal to issue regulations and subsequent LOAs with preliminary determinations (80 FR 9510). The filing of the notice initiated a 30-day public comment period, which was then extended by 15 days. The comments and our responses are discussed later in this document.

The activity will occur for approximately 8–9 months annually over the course of a 5-year period between August 2016 and July 2021. In-water airguns will be active for approximately 2–3 hours during each of the slack tide periods. There are approximately four slack tide periods in a 24-hour period; therefore, airgun operations will be active during approximately 8–12 hours per day, if weather conditions allow. The following specific aspects of the activity are likely to result in the take of marine mammals: seismic airgun operations. Take, by Level B Harassment only, of individuals of nine species or stocks of marine mammals is anticipated to result from the specified activity.

Description of the Specified Activity

Overview

Apache has acquired over 850,000 acres of oil and gas leases in Cook Inlet since 2010 with the primary objective to explore for and develop oil and gas resources in Cook Inlet. Apache will conduct oil and gas seismic surveys in Cook Inlet, Alaska, in an area that encompasses approximately 5,684 km^2 (2,195 mi^2) of intertidal and offshore areas. This area is slightly larger than that shown in Apache's MMPA application and corresponds with the request contained in their Biological Assessment and Figure 1 in this document, which is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental/oilgas.htm#apache2020.* Vessels will lay and retrieve nodal sensors on the sea floor in periods of low current, or, in the case of the intertidal area, during high tide over a 24-hour period. In deep water, a hull or pole mounted pinger system will be used to determine the exact location of the nodes. The two instruments used in this technique are a transceiver (operating at 33–55kHz with a maximum source level of 188 dB re 1 μPa at 1 meter) and a transponder (operating at 35–50kHz with a maximum source level of 188 dB re 1 μPa at 1 meter). The majority of the sound energy produced by this project is from the seismic airgun array, for which Apache will use two synchronized vessels. Each source vessel will be equipped with compressors and 2,400 cubic inch (in^3) airgun arrays. Additionally, one of the source vessels will be equipped with a 440 in^3 shallow water source array, which can be deployed at high tide in the intertidal area in less than 1.8 m (6 ft) of water. The two source vessels do not fire the airguns simultaneously; rather, each vessel fires a shot every 24 seconds, leaving 12 seconds between shots.

The operation will utilize two source vessels, three cable/nodal deployment and retrieval operations vessels, a mitigation/monitoring vessel, a node re-charging and housing vessel, and two small vessels for personnel transport and node support in the extremely shallow waters in the intertidal area. Water depths for the program will range from 1–128 m (0–420 ft).

Seismic surveys are designed to collect bathymetric and sub-seafloor data that allow the evaluation of potential shallow faults, gas zones, and archeological features at prospective exploration drilling locations. In the spring of 2011, Apache conducted a seismic test program to evaluate the feasibility of using new nodal (no cables) technology seismic recording equipment for operations in Cook Inlet. This test program found and provided important input to assist in finalizing the design of the 3D seismic program in Cook Inlet (the nodal technology was determined to be feasible).

Apache began seismic onshore acquisition on the west side of Cook Inlet in September 2011 and offshore acquisition in May 2012 under an Incidental Harrassent Authorization (IHA) issued by NMFS for April 30, 2012, through April 30, 2013 (77 FR 27720, May 11, 2012). Apache continued seismic data acquisition for approximately 3 months in spring and summer 2014 in compliance with an IHA issued on March 4, 2014 (79 FR 13626, March 11, 2014). Apache reported a total of 29 level B harassment exposures from the 2014 IHA comprising beluga whales, humpback whales, harbor seals, and harbor porpoises, which was well within the scope of their authorization.

Dates and Duration

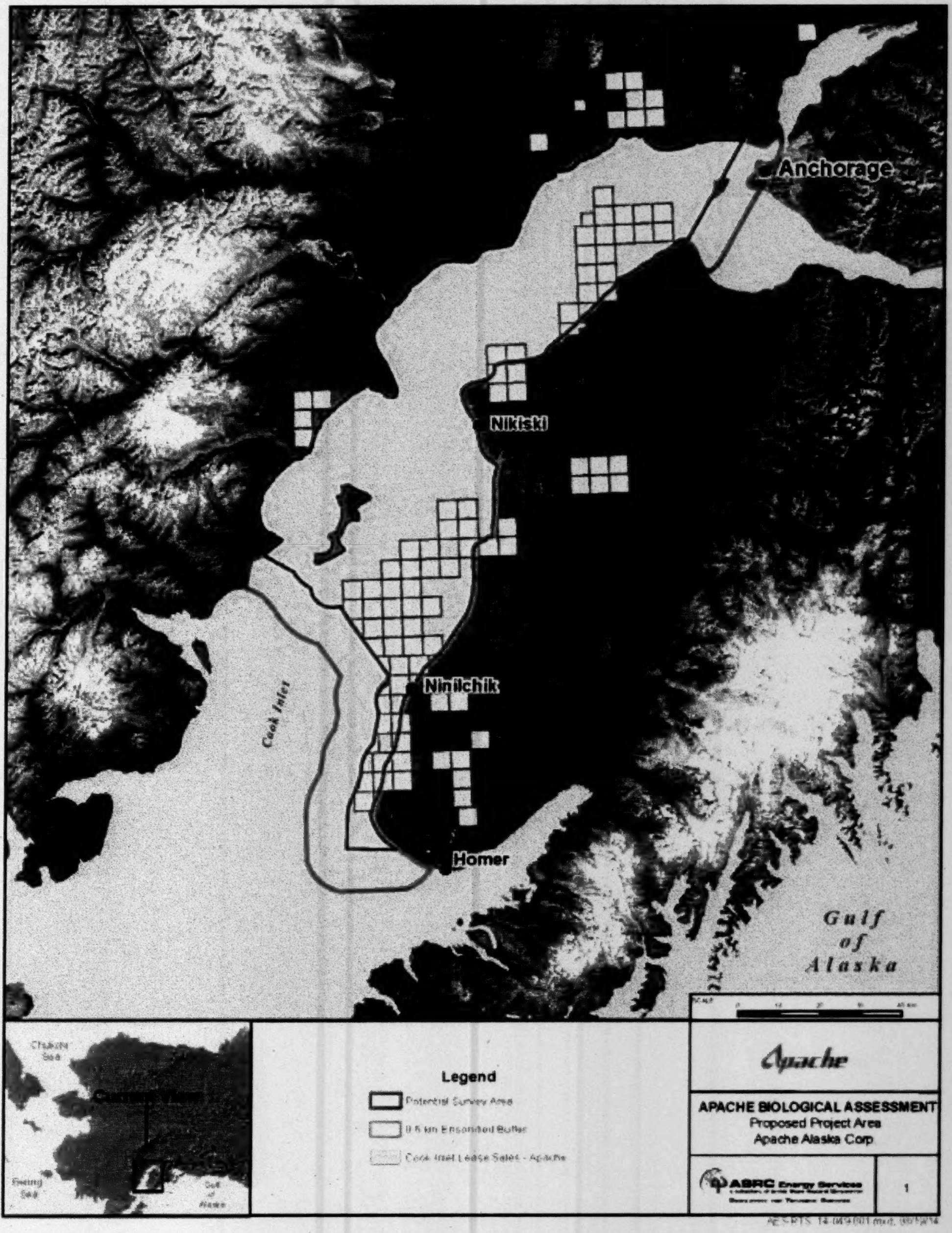
Apache will conduct offshore/transition zone seismic operations for approximately 8 to 9 months in offshore areas in open water periods from March 1 through December 31 annually over the course of 5 years. During each 24-hour period, seismic support activities may be conducted throughout the entire period; however, in-water airguns will only be active for approximately 2–3 hours during each of the slack tide periods. There are approximately four slack tide periods in a 24-hour period; therefore, airgun operations will be active during approximately 8–12 hours per day, if weather conditions allow. Two airgun source vessels will work concurrently on the spread, acquiring source lines approximately 12 km (7.5 mi) in length. Apache anticipates that a crew can acquire approximately eight of these 12km lines per day, assuming a crew can work 8–12 hours per day. Thus, the actual survey duration each year will take approximately 160 days over the course of 8 to 9 months. The vessels will be mobilized out of Homer or Anchorage with resupply runs occurring multiple times per week out of Homer, Anchorage, or Nikiski.

Specified Geographic Region

Each phase of the Apache program would cover land, intertidal transition zone, and marine environments in Cook Inlet, Alaska. However, only the portions occurring in the intertidal zone and marine environments have the potential to take marine mammals. The land-based portion of the program would not result in sound levels that would rise to the level of a marine mammal take.

The location of Apache's acquisition plan is depicted in Figure 1 in this document. The total seismic survey data acquisition locations encompass approximately 5,684 km^2 (2,195 mi^2) of intertidal and offshore areas. This area is approximately 18% larger than the area contained in Apache's MMPA application. The additional area for seismic survey data acquisition considered in this rule is located in northern Cook Inlet near the Susitna Delta region and was considered in both the proposed and final rule. Apache will only operate in a portion of the entire survey area between March 1 and December 31 each year. There are numerous factors that influence the survey areas, including the geology of the Cook Inlet area, other permitting restrictions (*i.e.*, commercial fishing, Alaska Department of Fish and Game refuges), seismic imaging of leases held by other entities with whom Apache has agreements (*e.g.*, data sharing), overlap of sources and receivers to obtain the necessary seismic imaging data, and general operational restrictions (ice, weather, environmental conditions, marine life activity, etc.). Water depths for the program will range from 1–128m (0–420 ft).

Figure 1. Project Area for Apache's 2016-2021 3D Seismic Survey Program


Anchorage
Nikiski
Ninilchik
Homer
Cook Inlet
Gulf of Alaska
Chukchi Sea
Bering Sea
Gulf of Alaska
Legend
Potential Survey Area
0.5 km Ensonified Buffer
Cook Inlet Lease Sales - Apache
Apache
APACHE BIOLOGICAL ASSESSMENT
Proposed Project Area
Apache Alaska Corp
ASRC Energy Services
1

Detailed Description of Activities

The Notice of Proposed Rulemaking (80 FR 9510, February 23, 2015) contains a full detailed description of the 3D seismic survey, including the recording system, sensor positioning, and seismic source. That information has not changed and is therefore not repeated here.

Comments and Responses

A Notice of Proposed Rulemaking was published in the **Federal Register** on February 23, 2015 (80 FR 9510) for public comment. NMFS received a request for extension of the public comment period from the Natural Resource Defense Council on March 2, 2015. NMFS granted a 15-day extension to the public comment period, which ended on April 9, 2015. During the 45-day public comment period, NMFS received fourteen comment letters from the following: The State of Alaska Department of Natural Resources (AK DNR); the Alaska Chamber; the All American Oil Field; the Alaska Oil and Gas Association (AOGA); the Chugach Alaska Corporation; Cook Inlet Regional Inc. (CIRI); the International Fund for

Animal Welfare (IFAW); the Resource Development Council (RDC); Natural Resource Defense Council (NRDC); the Marine Mammal Commission (MMC); the public law class of the Vermont Law School (VLS); and three private citizens.

All of the public comment letters received on the Notice of Proposed Rulemaking (80 FR 9510, February 23, 2015) are available on our Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following is a summary of the public comments and NMFS' responses.

Comment 1: One private citizen requested that we deny issuance of the IHA because marine mammals would be killed as a result of the survey.

Response: This activity is not expected to result in the death of any marine mammal species, and no such take is authorized. Extensive analysis of the proposed 3D seismic survey was conducted in accordance with the MMPA, Endangered Species Act (ESA), and National Environmental Policy Act (NEPA). We analyzed the impacts to marine mammals (including those listed as threatened or endangered under the ESA), to their habitat (including critical habitat designated under the ESA), and to the availability of marine mammals for taking for subsistence uses. The MMPA analyses revealed that the activities would have a negligible impact on affected marine mammal species or stocks and would not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. The ESA analysis concluded that the activities likely would not jeopardize the continued existence of ESA-listed species or destroy or adversely modify designated critical habitat. The NEPA analysis concluded that there would not be a significant impact on the human environment.

Comment 2: One private citizen requests that NMFS conduct research before and after the Apache survey activity to determine effects on wildlife.

Response: NMFS agrees that pre- and post-activity monitoring is essential to analyze effects of the activity and gather crucial information. Therefore, NMFS is requiring Apache to conduct a pre and post-activity monitoring period of 30 minutes to assess movement of marine mammals into and out of the ensonified area. Apache also conducts monitoring efforts when sound sources are not in use which can provide additional context to the observations made during periods when the active sound sources are in use.

Comment 3: The Resource Development Council, AK DNR, Alaska Chamber, All American Oilfield, AOGA, Chugach Alaska Corporation, and CIRI wrote letters in support of NMFS' issuance of 5-year regulations to Apache.

Response: After careful evaluation of all comments and the data and information available regarding potential impacts to marine mammals and their habitat and to the availability of marine mammals for subsistence uses, NMFS has issued the final regulations to Apache to take marine mammals incidental to conducting a 3D seismic survey program in Cook Inlet for the period August 2016 to July 2021.

Comment 4: The MMC and NRDC recommend that NMFS defer issuance of the regulations until such time as NMFS can, with reasonable confidence, support a conclusion that the activities would affect no more than a small number of Cook Inlet beluga whales and have no more than a negligible impact on the population. The MMC recommends that NMFS defer issuance until we have better information on the cause or causes of ongoing decline of the population and a reasonable basis for determining that authorizing additional takes would not contribute to or exacerbate that decline. The MMC continues to believe that any activity that may contribute to or that may worsen the observed decline should not be viewed as having a negligible impact on the population. NRDC urges NMFS to defer issuance of the rule, citing a letter dated Jan 13, 2014, from the MMC stating that NMFS has been unable to rule out cumulative disturbance associated with a broad suite of activities occurring in the Inlet, including oil and gas development, as a contributor to the decline of Cook Inlet beluga whales. Instead of issuing five-year regulations NRDC suggests that NMFS issue a one-year IHA.

Response: In accordance with our implementing regulations at 50 CFR 216.104(c), we use the best available scientific evidence to determine whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses.

Based on the scientific evidence available, NMFS determined that the impacts of the 3D seismic survey program, which are primarily from acoustic exposure, would meet these standards. Moreover, Apache proposed and NMFS has required in the regulations a rigorous mitigation plan to reduce impacts to Cook Inlet beluga whales and other marine mammals to the lowest level practicable, including measures to power down or shutdown airguns if any beluga whale is observed approaching or within the Level B harassment zone and restricting activities within a 10 mi (16 km) radius of the Susitna Delta from April 15 through October 15, which is an important area for beluga feeding and calving in the spring and summer months. This shutdown measure is more restrictive than the standard shutdown measures typically applied, and combined with the Susitna Delta exclusion (minimizing adverse effects to foraging), is expected to reduce both the scope and severity of potential harassment takes, ensuring that there are no energetic impacts from the harassment that would adversely affect reproductive rates or survivorship.

Our analysis indicates that issuance of these regulations will not contribute to or worsen the observed decline of the Cook Inlet beluga whale population. Additionally, the ESA Biological Opinion determined that the issuance of an IHA is not likely to jeopardize the continued existence of the Cook Inlet beluga whales (or the western distinct population segment of Steller sea lions) or destroy or adversely modify Cook Inlet beluga whale critical habitat. The Biological Opinion also outlined Reasonable and Prudent Measures and Terms and Conditions to reduce impacts, which have been incorporated into the IHA. Therefore, based on the analysis of potential effects, the parameters of the seismic survey, and the rigorous mitigation and monitoring program, NMFS determined that the activity would have a negligible impact on the population. The impacts from other past and ongoing anthropogenic activities are incorporated into the negligible impact analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and ambient noise). Cumulative effects were also addressed in the EA and related Finding of No Significant Impact and Biological Opinion prepared for this action. Those documents, as well as the Alaska Marine Stock Assessments and the most recent abundance estimate for Cook Inlet beluga whales (Shelden *et al.,* 2015), are part of NMFS' Administrative Record for this action, and provided the decision maker with information regarding other activities in the action area that affect marine mammals, an analysis of cumulative impacts, and other information relevant to the determination made under the MMPA.

Moreover, the seismic survey would take only small numbers of marine mammals relative to their population sizes. The number of belugas likely and authorized to be taken represents less than 9.6% of the population. NMFS used a method that incorporates density of marine mammals overlaid with the anticipated ensonified area to calculate an estimated number of takes for belugas, which was estimated to be less than 10% of the stock abundance, which NMFS considers small. In addition to this quantitative evaluation, NMFS has also considered qualitative factors that further support the "small numbers" determination, including: (1) The seasonal distribution and habitat use patterns of Cook Inlet beluga whales, which suggest that for much of the time, only a small portion of the population would be potentially subjected to impacts from Apache's activity, as most animals are concentrated in upper Cook Inlet; and (2) the mitigation requirements, which provide spatio-temporal limitations that avoid impacts to large numbers of animals feeding and calving in the Susitna Delta and limit exposures to sound levels associated with Level B harassment. Based on all of this information, NMFS determined that the number of beluga whales likely to be taken is small. See response to Comment 4 and our small numbers analysis later in this document for more information about the small numbers determination for beluga whales and the other marine mammal species.

NMFS has made the necessary findings to issue the 5-yr regulations for Apache's activities. Nonetheless, NMFS agrees that caution is appropriate in the management of impacts on this small resident beluga population with declining abundance and constricted range. Accordingly, NMFS will issue annual LOAs, as appropriate, instead of a single 5-year LOA option. This will allow the agency to determine annually, in consideration of Apache monitoring reports and any other new information on impacts or Cook Inlet belugas (or other affected species), whether the level of taking will be consistent with the findings made for the total taking allowable under these 5-year regulations before issuing an LOA. Annual LOAs will also allow for, if necessary and appropriate, a public comment period. Additionally, this rule contains an adaptive management provision that allows for the modification of mitigation or monitoring requirements at any time (in response to new information) to ensure the least practicable adverse impact on the affected species and maximize the effectiveness of the monitoring program. We also note the MMPA and NMFS' implementing regulations allow for an LOA to be withdrawn or suspended, as appropriate, if, after notice and opportunity for public comment, we determine that the taking allowed is having, or may have, more than a negligible impact on the species or stock (among other circumstances). 16 U.S.C. 1371(a)(5)(B); 50 CFR 216.106(e).

Comment 5: The MMC recommends that NMFS develop a policy that sets forth clear criteria and/or thresholds for determining what constitutes "small numbers" and "negligible impact" for the purpose of authorizing incidental takes of marine mammals. The MMC understands that NMFS has been working on developing a policy and would welcome an opportunity to discuss this policy further before it is finalized.

Response: NMFS is in the process of developing both a clearer policy to outline the criteria for determining what constitutes "small numbers" and an improved analytical framework for determining whether an activity will have a "negligible impact" for the purpose of authorizing takes of marine mammals. We fully intend to engage the MMC in these processes at the appropriate time.

Comment 6: The NRDC pointed by reference to the other proposed activities in Cook Inlet during the 2015 open water season. The NRDC, the MMC, and one private citizen note that NMFS must address the cumulative effects of activities in Cook Inlet on Cook Inlet beluga whales and whether the cumulative impacts of all the activities are having "either individually or in combination" a greater than negligible impact on marine mammals.

Response: Neither the MMPA nor NMFS' implementing regulations specify how to consider other activities and their impacts on the same populations when conducting a negligible impact analysis. However, consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into the negligible impact analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the density/distribution and status of the species, population size and growth rate, and ambient noise). In addition, cumulative effects were addressed in the EA and Biological Opinion prepared for this action. The cumulative effects section of the EA has been expanded from the draft EA to discuss potential effects in greater detail. These documents, as well as the Alaska Marine Stock Assessments and the most recent abundance estimate for Cook Inlet beluga whales (Shelden *et al.*, 2015) are part of NMFS' Administrative Record for this action, and provided the decision maker with information regarding other activities in the action area that affect marine mammals, an analysis of cumulative impacts, and other information relevant to the determination made under the MMPA.

Comment 7: The NRDC states that NMFS failed to account for survey duration in the estimation of beluga whale takes and that NMFS based beluga takes using a predictive habitat density model (Goetz *et al.*, 2012) that is based on data from summer months and confined to summer distribution when belugas are generally concentrated in the Upper Inlet, even though activity could occur year round. One private citizen also suggests that NMFS did not improve upon take estimation used in a previous IHA for Apache, which was found arbitrary and capricious.

Response: The numerical estimation of take for beluga whales does consider survey duration in the calculation. The Goetz *et al.* (2012) model is the best available data for beluga density in Cook Inlet. The method used by NMFS to estimate take uses that data to estimate the number of belugas taken. This is done by multiplying the density of the area surveyed on a given day by the area ensonified on that day of surveying to yield the number of belugas that were likely exposed during that day of surveying. This is then added to the next day of surveying and so forth in an additive model until the number of 30 belugas is reached. If the number of 30 belugas is reached using this calculation before Apache has completed their 160 days of proposed surveying, survey activity must cease. Additionally, if they finish their 160 days without reaching the limit of 30 belugas their activity must still cease. The model, by being additive in nature for each day of surveying, accounts for the duration of the survey, as well as capturing a more specific density value than using an Inlet-wide density estimate.

Moreover, the model (or other numerical methods for estimating take) does not take into consideration the rigorous mitigation protocols that will be implemented by Apache, which will likely reduce the number of actual Level B harassment takes of Cook Inlet beluga whales. As mentioned previously, the rule contains a condition restricting Apache's airgun operations within 10 mi (16 km) of the mean higher high water line of the Susitna Delta from

April 15 through October 15. During this time, a significant portion of the Cook Inlet beluga whale population occurs in this area for feeding and calving. This setback distance includes the entire 160 dB radius of 5.9 mi (9.5 km) predicted for the full airgun array plus an additional 4.1 mi (6.5 km) of buffer, thus reducing the number of animals that may be exposed to Level B harassment thresholds during this important time. Apache is also required to shut down the airguns if any beluga whale is sighted approaching or entering the Level B harassment zone to avoid take. NMFS used the Goetz *et al.* (2012) model, which incorporates many years of NMML data collection and is considered the best available source of density estimation, with consideration of all of the mitigation measures required to be implemented, to authorize 30 beluga whale takes. This approach is reasonable and does not contradict available science and data of beluga whale distribution and local abundance during the period of operations. While the data used to create the model is from beluga surveys conducted in summer months, the majority of Apache's operations occur in summer months. Finally, unlike the take estimates for NMFS' 2012 IHA, which were found to be erroneous because they did not include a correction factor for the raw beluga survey data, the beluga take estimates in this rule making use the most current information in a predictive beluga habitat model to estimate how many belugas are likely to occur in the area that Apache plans to survey.

Comment 8: The NRDC states that in the case of marine mammals other than beluga whales, NMFS repeated past errors associated with its use of raw NMML survey data. Cited errors in the density calculations include the failure to incorporate correction factors for missed marine mammals in the analysis and the failure to fully account for survey duration by multiplying densities (which are calculated on an hourly basis) by the number of survey days but not the number of hours in a day.

Response: Correction factors for marine mammal surveys, with the exception of beluga whales, are not available for Cook Inlet. The primary purpose and focus of the NMFS aerial surveys in Cook Inlet for the past decade has been to monitor the beluga whale population. Although incidental observations of other marine mammals are noted during these surveys, they are focused on beluga whales. With the exception of the beluga whale, no detailed statistical analysis of Cook Inlet marine mammal survey results has been conducted, and no correction factors have been developed for Cook Inlet marine mammals. The only published Cook Inlet correction factor is for beluga whales. Developing correction factors for other marine mammals would have required different survey protocols and consideration of unavailable data such as Cook Inlet marine mammal detection rates, tidally-influenced, daily and seasonal movement patterns, with subsequent detailed statistical analyses of these data. For example, other marine mammal numbers are often rounded to the nearest 10 or 100 during the NMFS aerial survey; resulting in unknown observation bias. Therefore, the data from the NMFS surveys are the best available, and number of animals taken are still likely overestimated because of the assumption that there is a 100% turnover rate of marine mammals each day.

Survey duration was appropriately considered in the estimations by multiplying density by area of ensonification by number of survey days. NMFS does not calculate takes on an hourly basis, and, additionally, the multiple hours surveyed within a day are reflected in the area of ensonification, which considers the distance Apache can move within a day and is therefore larger than what would be covered in one hour. Additionally, as NMFS has used the density estimate from NMFS aerial surveys, multiplied by the area ensonified per day, multiplied by the number of days, this calculation produces the number of instances of exposure during the seismic survey. This is likely an overestimate of individuals taken by Level B harassment, as a single individual can be exposed on multiple days over the course of the survey, especially when a small seismic patch is shot over a period of multiple days. While protected species observers (PSOs) cannot detect every single animal within the Level B harassment zone, monitoring reports from similar past activities indicate that sightings did not exceed calculated projected take.

Comment 9: The NRDC commented that NMFS underestimated the size of Apache's impact area by: (1) Using an outdated and incorrect threshold for behavioral take; and (2) disregarding the best available evidence on the potential for temporary and permanent threshold shift on mid- and high-frequency cetaceans and on pinnipeds. The NRDC also commented that it is irrational for NMFS to proceed with outdated acoustic thresholds when NMFS has developed a more appropriate method, stressing that take should not be authorized until the revision of acoustic thresholds for Level B take is complete.

Response: The comment that NMFS uses an outdated and incorrect threshold for behavioral takes does not include any specific recommendations. NMFS uses 160 dB (rms) as the exposure level for estimating Level B harassment takes by non-continuous sound for most species in most cases. This threshold was established for underwater impulse sound sources based on measured avoidance responses observed in whales in the wild. Specifically, the 160 dB threshold was derived from data for mother-calf pairs of migrating gray whales (Malme *et al.*, 1983, 1984) and bowhead whales (Richardson *et al.*, 1985, 1986) responding to seismic airguns (*e.g.*, impulsive sound source). We acknowledge there is more recent information bearing on behavioral reactions to seismic airguns, but those data only illustrate how complex and context-dependent the relationship is between the two, in some cases suggesting that animals have been disturbed at lower levels and in others showing a lack of response when exposed to levels above 160dB. See 75 FR 49710, 49716 (August 13, 2010) (IHA for Shell seismic survey in Alaska). Accordingly, it is not a matter of merely replacing the existing threshold with a new one. NOAA is working to develop more sophisticated guidance for determining impacts from acoustic sources, including information for determining Level B harassment thresholds. Due to the complexity of the task, any guidance will require a rigorous review that includes internal agency review, public notice and comment, and additional external peer review before any final product is published. In the meantime, and taking into consideration the facts and available science, NMFS determined it is reasonable to use the 160 dB threshold for estimating takes of marine mammals in Cook Inlet by Level B harassment. However, we discuss the science on this issue qualitatively in our analysis of potential effects to marine mammals.

The comment that NMFS disregarded the best available evidence on the potential for temporary and permanent threshold shift on mid- and high-frequency cetaceans and on pinnipeds does not contain any specific recommendations. We acknowledge there is more recent information available bearing on the relevant exposure levels for assessing temporary and permanent hearing impacts. (See, *e.g.*, NMFS' **Federal Register** notice (78 FR 78822, December 27, 2013) for

NMFS' draft guidance for assessing the onset of permanent and temporary threshold shift.) Again, NMFS will be issuing guidance, but that process is not complete, so we did not use it to assign new thresholds for calculating take estimates for hearing impacts. However, we did consider the information, and it suggests the current 180 dB (for cetaceans) and 190 dB (for pinnipeds) thresholds are appropriate. See 75 FR 49710, 49715, 49724 (August 13, 2010) (IHA for Shell seismic survey in Alaska; responses to comment 8 and comment 27). Moreover, the required mitigation is designed to ensure there are no exposures at levels thought to cause hearing impairment, and further, for belugas, and groups of killer whales and harbor porpoises in the project area, mitigation measures are designed to reduce or eliminate exposures to Level B harassment thresholds as well.

Comment 10: The NRDC comments that the proposed mitigation measures fail to meet the MMPA's "least practicable adverse impact" standard. The NRDC provides a list of approximately eight measures that NMFS "failed to consider or adequately consider."

Response: NMFS provided a detailed discussion of proposed mitigation measures and the MMPA's "least practicable impact" standard in the notice of the proposed IHA (80 FR 9510, February 23, 2015), which are repeated in the "Mitigation" section of this notice. The measures that NMFS allegedly failed to consider or adequately consider are identified and discussed below:

1. Use of quieting technologies, such as vibroseis and gravity gradiometry, to reduce or eliminate the need for airguns, and delaying seismic acquisition in higher density areas until the alternative technology of marine vibroseis becomes available: Apache requested takes of marine mammals incidental to the seismic survey operations described in the rulemaking application, which identified airgun arrays as the technique Apache would employ to acquire seismic data. It would be inappropriate for NMFS to change the specified activity and it is beyond the scope of the request for takes incidental to Apache's operation of airguns and other active acoustic sources.

Apache knows of no alternative available technology scaled for industrial use that is reliable enough to meet the environmental challenges of operating in Cook Inlet. Apache is aware that many prototypes are currently in development, and may ultimately incorporate these new technologies into their evaluation process as the technologies become commercially viable. However, none of these technologies are currently ready for use on a large scale in Cook Inlet. As this technology is developed, Apache will evaluate its utility for operations in the Cook Inlet environment.

2. Required use of the lowest practicable source level in conducting airgun activity: Apache determined that the 2400 in^3 array is the minimum source level needed to provide the data required for Apache's operations.

3. Seasonal exclusions around river mouths, including early spring (pre-April 14) exclusions around the Beluga River and Susitna Delta, and avoidance of other areas that have a higher probability of beluga occurrence: NMFS has required a 10-mile (16 km) exclusion zone around the Susitna Delta (which includes the Beluga River) in this regulation. This mitigation mirrors a measure in the Incidental Take Statement for the 2012 and 2013 Biological Opinions. Seismic survey operations involving the use of airguns will be prohibited in this area between April 15 and October 15. In both the MMPA and ESA analysis, NMFS determined that this date range is sufficient to protect Cook Inlet beluga whales and the critical habitat in the Susitna Delta. While data indicate that belugas may use this part of the inlet year round, peak use occurs from early May to late September. NMFS added a 2-week buffer on both ends of this peak usage period to add extra protection to feeding and calving belugas. NMFS also expanded the exclusion zone to start from the mean higher high water line to the mean lower low water line. (In addition, the Alaska Department of Fish and Game (ADF&G) prohibits the use of airguns within 1 mi (1.6 km) of the mouth of any stream listed by the ADF&G on the Catalogue of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes. See additional explanation in "Mitigation Measures Considered but not Required" section, later in this document.)

4. Limitation of the mitigation airgun to the longest shot interval necessary to carry out its intended purpose: This general comment contained no specific recommendations. Apache requires shot intervals of 50m at a speed of 2–4 knots to obtain the information from their survey. However NMFS has added a mitigation measure that Apache reduce the shot interval for the mitigation gun to one shot per minute.

5. Immediate suspension of airgun activity, pending investigation, if any beluga strandings occur within a distance of 19km (two times the 160dB isopleth) the survey area: If NMFS becomes aware of any live beluga strandings, Apache will be notified and required to shutdown if the stranding event is within 19km (two times the 160 dB isopleth) of Apache's operations until the circumstances of the stranding are reviewed. The regulation also requires Apache to immediately cease activities and report unauthorized takes of marine mammals, such as live stranding, injury, serious injury, or mortality. NMFS will review the circumstances of Apache's unauthorized take and determine if additional mitigation measures are needed before activities can resume to minimize the likelihood of further unauthorized take and to ensure MMPA compliance. Apache may not resume activities until notified by NMFS. Separately, the regulation includes measures to be implemented if injured or dead marine mammals are sighted and the cause cannot be easily determined. In those cases, NMFS will review the circumstances of the stranding event while Apache continues with operations.

6. Establishment of a larger exclusion zone for beluga whales that is not predicated on the detection of whale aggregations or cow-calf pairs: Both the proposed rule notice and the issued regulations contain a requirement for Apache to delay the start of airgun use or shutdown the airguns if a beluga whale is visually sighted or detected by passive acoustic monitoring approaching or within the 160-dB disturbance zone until the animal(s) are no longer present within the 160-dB zone. The measure applies to the sighting of any single beluga whale, not just sightings of groups or cow-calf pairs.

7. Identifying compensatory mitigation such as habitat restoration to be undertaken by industry within the Inlet: NMFS is issuing an Authorization for incidental take of marine mammals for Apache's seismic survey program. NMFS is required to consider the practicability of implementation of the measure as well as proven or likely effectiveness of the measure. NMFS is not currently aware of literature demonstrating the effectiveness of habitat restoration on mitigating the effects of airgun noise. Additionally, NMFS considers effects to beluga habitat to be primarily acoustic and temporary in nature, which is difficult to mitigate.

8. Creating quiet zones in highly important habitat: NMFS agrees that reduction of noise in habitat known to be essential for marine mammals is also area that should be targeted for measures to reduce noise. This principle

is incorporated through the exclusion zone of the Susitna Delta, ensuring that airgun noise is not prevalent within this section of Critical Habitat Area 1 for Cook Inlet belugas.

Comment 11: The MMC suggests that NMFS work with Apache to explore the possibility of fixed passive acoustic monitoring. The NRDC echoed support for the use of passive acoustic monitoring techniques, moorings, and unmanned aerial systems.

Response: The passive acoustic monitoring plan for Apache Alaska Corporation's 2012 survey anticipated the use of a bottom-mounted telemetry buoy to broadcast acoustic measurements using a radio-system link back to a monitoring vessel. Although a buoy was deployed during the first week of surveying under the 2012 IHA, it was not successful. Upon deployment, the buoy immediately turned upside down due to the strong current in Cook Inlet. After retrieval, the buoy was not redeployed and the survey used a single omni-directional hydrophone lowered from the side of the mitigation vessel. During the entire 2012 survey season, Apache's PAM equipment yielded only six confirmed marine mammal detections, one of which was a Cook Inlet beluga whale. The single Cook Inlet beluga whale detection did not, however, result in a shutdown procedure.

Additionally, Joint Base Elmendorf-Fort Richardson, the National Marine Mammal Laboratory, and Alaska Department of Fish &Game conducted a 2012 study (Gillespie *et al.*, 2013) to determine if beluga whale observations at the mouth of Eagle River corresponded with acoustic detections received by a PAMBuoy data collection system. The PAMBuoy data collection system was deployed in the mouth of Eagle River from 12–31 August 2012. This study was a trial period conducted with one hydrophone at the mouth of the river. Overall, it was successful in detecting beluga whale echolocation clicks and whistles, but PAM systems in this location may be limited due to: interactions with ice and debris, transmission distance limitations, detection distance limitations, and masking due to non-target sound sources. In addition, acoustic detections may be largely duplicative of daylight visual observations, the system cost is not trivial, and mooring of buoys can be a challenge in this environment of extreme tides. However, despite these challenges with PAM in certain circumstances, there is still value in exploring its use and it is not logistically impractical for this project and, therefore, Apache will be deploying a passive acoustic monitoring system for use during nighttime operations.

Comment 12: The MMC requested clarification regarding Authorizations sought by Apache and SAE and inquired if these Authorizations were for the same project. The MMC recommends that NMFS encourage SAE and other applicants proposing to conduct seismic surveys in Cook Inlet in 2015 to collaborate on those surveys and, to the extent possible, submit a single application seeking authorization for incidental harassment of marine mammals.

In a similar comment, the NRDC expressed concern over the number of activities proposed in the same area for the same season referencing applications for: Furie, Bluecrest, Buccaneer, and Apache.

Response: We agree and have encouraged Apache to cooperate with other interested parties to minimize the impacts of new seismic surveys in the region. Apache has told NMFS that their proposed activities are a separate project from that of SAE. SAE has also withdrawn their request for an IHA in 2016. Apache will continue its discussions with other operators in Cook Inlet to find opportunities to joint venture in oil and gas operations, including seismic data acquisition. In addition, NMFS will do what it can to encourage such collaborations when they result in a reduction in disturbance to protected species or their habitats.

NMFS is currently aware of one additional proposal for seismic exploration in Cook Inlet for 2016. Additionally, there are applications submitted for one geophysical survey and one test well drilling operation, which is proposed for a site much farther south than any of the above mentioned operations.

Comment 13: Both the NRDC and the MMC comment that authorization should not be issued until the Cook Inlet Beluga Whale Take Recovery Plan is finalized and published.

Response: The Cook Inlet Beluga Whale Recovery Plan is still under development and currently available in published draft form. It is not necessary to have the Recovery Plan finalized to authorize Apache's activity, as NMFS is still able to make a negligible impact determination for beluga whales using the best available information. NMFS will continue to work with Apache to focus mitigation and monitoring efforts to cover some of the focus points highlighted in the Draft Recovery Plan as appropriate.

Comment 14: The MMC comments that various applicants in the Cook Inlet region have used differing density estimates for calculating take of marine mammal species in the Inlet and that all applicants should use the same densities.

Response: The density estimates used for the 2015 SAE IHA and in the Final Rule for Apache, specifically for harbor porpoises and killer whales, are the best available science at this time. The data are from NMFS aerial surveys over a ten year period (2000–2012). NMFS is working with applicants to incorporate these density estimates into future applications and take authorizations. However, for harbor seals, which are known to have clustered distributions, density estimates and derived take estimation may vary based on action area boundaries, site-specific knowledge of abundance, density, seasonality, or other qualities that could allow for a more nuanced assessment of the density in a given location.

Comment 15: The MMC comments that Apache should be required to investigate and report on detection probabilities from various observation platforms for differing sea states and light conditions.

Response: NMFS acknowledges that collecting detection probabilities from various platforms under different conditions would be very useful information and could better inform monitoring reports by discerning how many animals were likely taken. However, constructing a study to investigate detection probabilities requires a great deal of planning and many more observers than are involved in this survey. NMFS would like to work with the MMC to discuss how best to conduct this work and refine detection probabilities for seismic surveys.

Comment 16: The NRDC comments that the effective dates in the proposed rule suggest a curtailing of public review in violation of the Administrative Procedure Act in that they do not allow for NMFS to sufficiently review and address public comments before the rule's proposed date of effectiveness.

Response: The date provided in the proposed rule was the date proposed by the applicant originally for this work. NMFS has had ample time to review and address public comments prior to making its determinations for this rule and the effective dates have been adjusted accordingly. The dates of effectiveness for the rule have shifted since the proposed rule publication, giving NMFS adequate time to review and respond to public comment submitted by the close of public comment on April 9, 2015.

Comment 17: The MMC comments that the use of turnover factors for take estimation in the proposed rule is inappropriate. The MMC requests that NMFS use the same density × daily ensonified area × number of days formula used for previous authorizations. The MMC also notes that if NMFS uses a turnover factor that it should consult the literature to create a more biologically relevant turnover factor than that derived from Wood *et al.* (2012). The MMC also recommends that NMFS re-evaluate the necessary determinations with the new take estimates.

Response: After reviewing public comment submissions, NMFS decided to adjust the method used to estimate take in Cook Inlet. NMFS removed the use of turnover factors from Wood *et al.* (2012) completely from take estimation. The daily ensonified area × number of survey days × density method was used for all species to calculate the number of instances of exposure except for belugas, harbor seals, humpback whales, and Steller sea lions. Using sighting reports collected by the Alaska region, NMFS has determined that given the distribution of Steller sea lions in Cook Inlet, it is unlikely that more than 20 individuals will be taken during the course of one year. Similarly, while several humpbacks are reported in Cook Inlet each year, it is unlikely that Apache will expose more than two humpbacks during their surveying each year.

For Cook Inlet belugas, NMFS derived a method to ensure that Apache take no more than 30 belugas annually, which is approximately 10 percent of the population. Using the Goetz *et al.* (2012) habitat model, Apache will calculate the possible take (density from the model × the area surveyed that day) for each day and sum the possible take across days until 30 is reached. When the take per day summed amounts to 30, Apache must cease surveying for the season. As an additional measure, and to account for a sudden sighting of a large group of belugas, Apache will also cease surveying if 30 belugas are visually observed to enter the 160dB harassment zone.

For harbor seals, it is likely the daily ensonified area produces an overestimate of individuals taken, as described in more details in the Estimated Take section. NMFS applied the survey method used by Apache, patch shooting, and applied the number of days required to shoot a patch to estimate the number of days an animal at a given haulout could be exposed. This is an average of 3 days, but no more than 5. When this factor is applied to the estimate of instances of exposures by using the ensonified daily area method, the number of exposed individual seals can be more reasonably estimated and is much lower than the number of instances of exposure, at 6,438. This number is appropriately reduced even further as individuals could be exposed at multiple patches. Separately, NMFS then considered the harbor seal densities alongside monitoring reports from Apache's work in 2012. NMFS looked at the monitoring reports from Apache's aerial surveys in June and used correction factors from the literature to determine the number of seals in the water. This number was also multiplied to match the number of Apache's proposed survey days (160) to yield a number of 8,250 instances of take, notably lower than 24,279. Additionally, in their 147 days of surveying, Apache reported sightings of 285 seals. While it is understood that visual observations likely underestimate the actual number of exposures, as all seals in the 160dB range are not visible, it is worth noting that the number of visual estimates is 131 times smaller than the calculated number of exposures using the daily ensonified area method. These methods are discussed in greater detail in the Takes Estimation section of this document, but in summary we concluded that not more than 25% of the population of harbor seals would be taken. The daily ensonified method results in an estimate of 24,279 instances of exposure, but this is likely an over-estimation of the number of instances of exposure and also does not represent the number of unique individuals in the population taken during the course of the survey. As explained in the Negligible Impact Determination and Small Numbers sections below, NMFS is able to make the necessary determinations for all species using the new take estimation methodology.

Comment 18: Both the NRDC and MMC commented that the use of figures for the survey area was unclear and it was difficult to determine if the project area was expanded after the **Federal Register** Notice of Receipt of Apache's Application (79 FR 45428).

Response: NMFS acknowledges that the figure used was unclear. The analysis in the proposed rule, however, was for the action area being considered, which did not change between the proposed and final rule.

Comment 19: NRDC commented that NMFS did not take higher densities of beluga whales in the Upper Inlet into account when making a negligible impact determination, analyzing mitigation requirements, or adopting a cap to allow Apache geographic flexibility during the survey. The MMC also commented that the analysis did not take into account the expanded survey area in the Upper Inlet.

Response: NMFS believes that increased density of beluga whales in the Upper Inlet is taken into account, despite the geographic flexibility allowed by Apache. The area ensonified each day will be multiplied by the applicable 1 km^2 grid cell densities taken from the Goetz *et al.* (2012) paper. The modeling in this paper clearly demonstrates a higher density of belugas in the Upper Inlet. Therefore, using these densities accounts for area of high beluga density in the Upper Inlet. Additionally, NMFS has created an exclusion zone within 10 miles of the Susitna River Delta, an area of known importance for belugas in the summer, to ensure that Apache's activity does not interfere with such an important area. When considering these things in combination, NMFS was able to make a negligible impact determination. NMFS also clarifies that while an ambiguous figure was used, Apache is not proposing to expand the survey beyond what was analyzed in the proposed rule.

Comment 20: The NRDC commented that the number of takes in the regulatory text and Table 5 of the preamble were different.

Response: NMFS acknowledges the discrepancy and points to Table 5 of the preamble for the correct take estimates. However, because methodology has been altered between the issuance of the proposed rule and the final rule due to public comment and analysis of monitoring reports and sightings information, these take tables have changed.

Comment 21: The MMC comments that NMFS should clarify if Apache should be requesting take of humpback whales, minke whales, and Dall's porpoises. Furthermore, NMFS should work with applicants to determine which species should be included in authorizations.

Response: Apache did not request take of humpback whales, minke whales, and Dall's porpoises. However, because they have been sighted during Apache's previous surveying, NMFS has decided to authorize Level B harassment for small numbers of minke whales and Dall's porpoise. Additionally, take of humpback whales was analyzed in the Biological Opinion, due to the number of reported sightings of humpback whales in Cook Inlet in summer 2015.

Comment 22: The MMC requests that NMFS periodically reconvene the Cook Inlet Beluga Whale Recovery Team (CIBWRT) and related working groups to prioritize research and monitoring recommendations as well as other recovery plan items.

Response: The determination of whether and when to reconvene the COBWRT is outside of the scope of this authorization. However, NMFS plans to incorporate recommendations from the Cook Inlet Beluga Whale Recovery Plan as appropriate into monitoring and mitigation requirements after the recovery plan is finalized through the adaptive management provisions of the rule.

Comment 23: The MMC recommends that NMFS restrict all seismic activity occurring in Critical Habitat Area 1 to the time between October 15th and April 15th to minimize impacts to belugas using this seasonally vital habitat.

Response: Given the seasonal nature of beluga concentrations, and their tendency to congregate in areas near Knik Arm and Turnagain Arm in the summer months, NMFS believes that the Susitna River Delta exclusion zone of 10 nmi from the MLLW line between the Susitna and Beluga Rivers is sufficient closure to protect beluga use of that portion of their critical habitat during times of high use.

Comment 24: The NRDC recommends that NMFS require seismic operators to contribute to a comprehensive monitoring plan to better understand beluga distribution, individual effects, and cumulative effects of human activities on beluga whales.

Response: NMFS believes that seismic operators have a substantial amount of information to contribute to our understanding of Cook Inlet beluga distribution, particularly through monitoring reports. It is also crucial to better understand individual and cumulative effects of human activities on belugas. NMFS is working to compile and analyze monitoring reports across all authorized activities to analyze effectiveness of mitigation and inform further monitoring plans for future Authorizations. We plan to develop a comprehensive monitoring plan for Cook Inlet concurrently with the development of the Environmental Impact Statement on the Issuance of Take Authorizations in Cook Inlet, Alaska (79 FR 61616).

Comment 25: One private citizen commented that Apache should pay a large sum of money to a superfund to mitigate damage from the project by buying land for conservation easements or funding alternative energy research. This commenter also states that the only effective way to mitigate serious impacts is to remove airguns from sensitive environmental areas, cap activities by region and year, and promote alternative energies.

Response: Where applicable, Apache has already proposed to implement certain measures mentioned above. The mandatory seasonal closure of the Susitna Delta from April 15-October 15 annually removes airguns from a portion of essential habitat at time of high use for belugas. The mitigation and monitoring in this rule represent the most effective and practicable means of reducing the impacts of Apache's activities on the affected marine mammal populations and their habitat. The purchase of land is not applicable to ensuring the least practicable adverse impact for this activity under the MMPA.

Comment 26: One private citizen commented that the extended timeline of the project did not receive feedback from the community. There were also several comments included that referenced environmental impacts of drilling by Apache.

Response: The public comment period, which was extended from 30 to 45 days, provided reasonable time for interested parties to submit public comment regarding the proposed regulations and many such comments were received by NMFS. NMFS would like to reiterate that the petition for regulations relates to seismic surveying by Apache in Cook Inlet and that no portion of these regulations pertains to drilling activities.

Comment 27: IFAW comments that the effects of noise from seismic activity contribute to problems between vessels and whales, including ship strike and entanglement.

Response: NMFS is aware that ship strikes and entanglements can occur in locations where whales and certain human activities co-exist. However, NMFS is not aware of any studies that demonstrate seismic noise increases the likelihood of these occurrences. NMFS is unaware of any entanglements or ship strikes that have occurred from seismic operations in Cook Inlet. IFAW did not provide citations for NMFS to delve further into these claims.

Comment 28: The public law class of VLS comments that a mass stranding event, similar to the 2008 stranding in Madagascar, could reduce beluga numbers by one third.

Response: NMFS does not believe that a mass stranding similar to that off Madagascar in 2008 could occur from the proposed seismic survey considered in the rulemaking for Apache. There are several distinctions between the survey in Madagascar and Apache's survey: equipment type, type of environment, and species of cetacean considered. The Madagascar stranding was secondarily associated with multibeam echosounder use, not a seismic survey, operating at a different frequency than that of airguns and conducting operations in a different manner that was specifically problematic for the species and environment present. Additionally, the mammals that stranded were melon headed whales, which have a large average group size and are deep divers, and those particular animals incurred secondary health problems from their extended time spent stranded following their initial behavioral response to the sound exposure. Lastly, the type of surveying proposed by Apache has been conducted fairly consistently in Cook Inlet under IHAs, and has not caused mass strandings of Cook Inlet belugas or other Cook Inlet marine mammal species.

Comment 29: The public law class of VLS comments that allowing take for the proposed activity is a mismanagement of ESA protections for endangered belugas.

Response: NMFS disagrees. This rulemaking is undertaken pursuant to the MMPA, not the ESA. However, because we proposed to authorize take of ESA-listed species, including Cook Inlet belugas, consultation under section 7 of the ESA is required. The Biological Opinion for this activity concluded jeopardy was not likely, and therefore the take associated with this rule is considered allowable under the MMPA and ESA.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS's jurisdiction that could occur near operations in Cook Inlet include four cetacean species: Beluga whale (*Delphinapterus leucas*), humpback whale (*Megaptera noveangliae*), killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli),* minke whale (*Balaenoptera acutorostrata*), and gray whale (*Eschrichtius robustus*) and two pinniped species: Harbor seal (*Phoca vitulina richardsi*) and Steller sea lions (*Eumetopias jubatus*). The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the planned surveys is the harbor seal. While killer whales, humpback whales, minke whales, Dall's porpoise, and gray whales as well as Steller sea lions have been sighted in upper Cook Inlet, their occurrence is considered rare in that portion of the Inlet.

Of the nine marine mammal species likely to occur in the marine survey area, Cook Inlet beluga whales, Central

North Pacific humpback whales, and Steller sea lions are listed as endangered under the ESA (Steller sea lions are divided into two distinct population segments (DPSs), an eastern and a western DPS; the relevant DPS in Cook Inlet is the western DPS). The eastern DPS was recently removed from the endangered species list (78 FR 66139, November 4, 2013).

TABLE 1—TABLE OF STOCKS EXPECTED TO OCCUR IN THE PROJECT AREA

Species	Stock	ESA/MMPA status;[1] strategic (Y/N)	Stock abundance (CV, N_{min}, year of most recent abundance survey)[2]	Relative occurrence in Cook Inlet; season of occurrence
Humpback whale	Central North Pacific	E/D;Y	7,469 (0.095;5,833;2000)	Occasionally seen in Lower Inlet, summer, rare in upper inlet.
Gray whale	Eastern North Pacific	-; N	19,126 (0.071; 18,017; 2007)	Rare migratory visitor; late winter.
Killer whale	Alaska Resident	-;N	2,347 (N/A; 2,084; 2009)	Occasionally seen in Lower Cook Inlet.
	Gulf of Alaska, Aleutian Island, Bering Sea Transient.	-;N	345 (N/A; 303; 2003).	
Beluga whale	Cook Inlet	E/D;Y	312 (0.10; 280; 2012)	Use upper Inlet in summer and winter and lower inlet primarily in winter: Annual.
Minke whale	Alaska	-;N	1,233 (0.034;N/A;2003)	Infrequently occur but reported year-round.
Dall's porpoise	Alaska	-:N	106,000[3] (0.20; N/A; 1991)	Infrequently found in Lower Inlet.
Harbor porpoise	Gulf of Alaska	-;Y	31,046 (0.214; 25,987; 1998)	Widespread in the Inlet: annual (less in winter).
Steller sea lion	Western DPS	E/D;Y	79,300 (N/A; 45,659; 2012)	Primarily found in lower Inlet, rare in upper inlet.
Harbor seal	Alaska—Cook Inlet	-;N	22,900 (0.053; 21,896; 2006)	Frequently found in upper and lower inlet ; annual (more in northern Inlet in summer).

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the specie's (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Because there is such little data regarding Dall's porpoises in Alaska, these population numbers refer to the Gulf of Alaska portion of the Alaska stock only.

Pursuant to the ESA, critical habitat has been designated for Cook Inlet beluga whales and Steller sea lions. The action falls within critical habitat designated in Cook Inlet for beluga whales but is not within critical habitat designated for Steller sea lions. On April 11, 2011, NMFS announced the two areas of beluga whale critical habitat (76 FR 20180) comprising 7,800 km² (3,013 mi²) of marine habitat. Designated beluga whale Critical Habitat Area 1 consists of 1,909 km² of Cook Inlet, north of Three Mile Creek and Point Possession. Critical Habitat Area 1 contains shallow tidal flats or mudflats and mouths of rivers that provide important areas for foraging, calving, molting, and escape from predators. High concentrations of beluga whales are often observed in these areas from spring through fall. Critical Habitat Area 2 consists of 5,891 km² located south of Critical Habitat Area 1 and includes waters between Critical Habitat area 1 and 60°15′ North Latitude as well as nearshore areas along western Cook Inlet and Kachemak Bay. Critical Habitat Area 2 consists of known fall and winter foraging and transit habitat for beluga whales, as well as spring and summer habitat for smaller concentrations of beluga whales. Approximately 711 km² of Apache's 5684 km² seismic survey area is in the designated beluga whale Critical Habitat Area 1 and approximately 4,200 km² is in the designated beluga whale Critical Habitat Area 2.

There are several species of mysticetes that have been observed infrequently in lower Cook Inlet, including minke whale (*Balaenoptera acutorostrata)* and fin whale (*Balaenoptera physalus*). Because of their infrequent occurrence in the location of seismic acquisition, they are not included in this rule. Sea otters also occur in Cook Inlet. However, sea otters are managed by the U.S. Fish and Wildlife Service and are therefore not considered further in this rule.

Beluga Whale (Delphinapterus leucas)

Cook Inlet beluga whales have not made significant progress towards recovery since they were listed as endangered in 2008. Data indicate that the Cook Inlet population of beluga whales has been decreasing at a rate of 0.6 percent annually between 2002 and 2012 (Allen and Angliss, 2014). One review of the status of the population indicated that there is an 80% chance that the population will decline further (Hobbs and Shelden, 2008).

Cook Inlet beluga whales reside in Cook Inlet year-round, although their distribution and density changes seasonally. Factors that are likely to influence beluga whale distribution within the inlet include prey availability, predation pressure, sea-ice cover and other environmental factors, reproduction, sex and age class, and human activities (Rugh *et al.*, 2000; NMFS 2008). Seasonal movement and density patterns as well as site fidelity appear to be closely linked to prey availability, coinciding with seasonal salmon and eulachon concentrations (Moore *et al.,* 2000). For example, during spring and summer, beluga whales are generally concentrated near the warmer waters of river mouths where prey availability is high and predator occurrence is low (Huntington 2000; Moore *et al.,* 2000). During the winter (November to April), belugas disperse throughout the upper and mid-inlet areas, with animals found between Kalgin Island and Point Possession (Rugh *et al.,* 2000). During these months, there are generally fewer observations of beluga whales in the Anchorage and Knik Arm area (NMML 2004; Rugh *et al.,* 2004).

Beluga whales use several areas of the upper Cook Inlet for repeated summer and fall feeding. The primary hotspots for beluga feeding include the Big and Little Susitna rivers, Eagle Bay to Eklutna River, Ivan Slough, Theodore River, Lewis River, and Chickaloon River and Bay (NMFS, 2008). Availability of prey species appears to be the most influential environmental variable affecting Cook Inlet beluga whale distribution and relative abundance (Moore *et al.,* 2000). The patterns and timing of eulachon and salmon runs have a strong influence on beluga whale feeding behavior and their seasonal movements (Nemeth *et al.,* 2007; NMFS, 2008). The presence of prey species may account for the seasonal changes in beluga group size and composition (Moore *et al.,* 2000). Aerial and vessel-based monitoring conducted by Apache during the March 2011 2D test program in Cook Inlet reported 33 beluga sightings. One of the sightings was of a large group (~25 individuals on March 27, 2011) of feeding/milling belugas near the mouth of the Drift River. If belugas are present during the late summer/early fall, they are more likely to occur in shallow areas near river mouths in upper Cook Inlet. For example, no beluga whales were observed in Trading Bay during Apache's 2D SSV conducted in September 2011, likely because during that time of year they were primarily located in the upper regions of Cook Inlet.

Humpback Whale (Megaptera novaeangliae)

Although there is considerable distributional overlap in the humpback whale stocks that use Alaska, the whales seasonally found in lower Cook Inlet are probably of the Central North Pacific stock. Listed as endangered under the ESA, this stock has recently been estimated at 7,469, with the portion of the stock that feeds in the Gulf of Alaska estimated at 2,845 animals (Allen and Angliss 2014). The Central North Pacific stock winters in Hawaii and summers from British Columbia to the Aleutian Islands (Calambokidis *et al.,* 1997), including Cook Inlet.

Humpback use of Cook Inlet is largely confined to lower Cook Inlet. They have been regularly seen near Kachemak Bay during the summer months (Rugh *et al.,* 2005a), and there is a whale-watching venture in Homer capitalizing on this seasonal event. There are anecdotal observations of humpback whales as far north as Anchor Point, with recent summer observations extending to Cape Starichkof (Owl Ridge 2014). Humpbacks might be encountered in the vicinity of Anchor Point if seismic operations were to occur off the point during the summer. In 2013, Apache encountered a humpback and calf in the ensonified area during seismic operations.

Killer Whales (Orcinus orca)

In general, killer whales are rare in upper Cook Inlet. Transient killer whales are known to feed on beluga whales, and resident killer whales are known to feed on anadromous fish (Shelden *et al.,* 2003). The availability of these prey species largely determines the likeliest times for killer whales to be in the area. Between 1993 and 2004, 23 sightings of killer whales were reported in the lower Cook Inlet during aerial surveys by Rugh *et al.* (2005). Surveys conducted over a span of 20 years by Shelden *et al.* (2003) reported 11 sightings in upper Cook Inlet between Turnagain Arm, Susitna Flats, and Knik Arm. No killer whales were spotted during surveys by Funk *et al.* (2005), Ireland *et al.* (2005), Brueggeman *et al.* (2007a, 2007b, 2008), or Prevel Ramos *et al.* (2006, 2008). Eleven killer whale strandings have been reported in Turnagain Arm, six in May 1991 and five in August 1993. NMFS aerial survey data spanning 13 years conducted in June each year have reported sightings ranging from 0 to 33 whales in a single year, although these surveys extend beyond the action area of Apache's survey. Sightings data can be found in Table 5 of Apache's application. Therefore, very few killer whales, if any, are expected to approach or be in the vicinity of the action area.

Harbor Porpoise (Phocoena phocoena)

Previously estimated density for harbor porpoises in Cook Inlet is 7.2 per 1,000 km^2 (Dahlheim *et al.,* 2000), suggesting that only a small number use Cook Inlet. Data from NMFS aerial surveys (Table 5 in Apache's application) flown annually in June from 2000–2012 sighted anywhere from 0 to 100 porpoises in a single season. The densities derived from this data range from 0 to 0.014 animals per km^2. Harbor porpoise have been reported in lower Cook Inlet from Cape Douglas to the West Foreland, Kachemak Bay, and offshore (Rugh *et al.,* 2005). Small numbers of harbor porpoises have been consistently reported in upper Cook Inlet between April and October, but more recent observations have recorded higher numbers (Prevel Ramos *et al.,* 2008). Prevel Ramos *et al.* (2008) reported 17 harbor porpoises from spring to fall 2006, while other studies reported 14 in the spring of 2007 (Brueggeman *et al.,* 2007) and 12 in the fall of 2007 (Brueggeman *et al.,* 2008). During the spring and fall of 2007, 129 harbor porpoises were reported between Granite Point and the Susitna River; however, the reason for the increase in numbers of harbor porpoise in the upper Cook Inlet remains unclear and the disparity between this result and past sightings suggests that it may be an anomaly. The spike in reported sightings occurred in July, which was followed by sightings of 79 harbor porpoises in August, 78 in September, and 59 in October 2007. It is important to note that the number of porpoises counted more than once was unknown, which suggests that the actual numbers are likely smaller than those reported. In 2012, Apache marine mammal observers recorded 137 sightings of 190 estimated individuals; a similar count to the 2007 spike previously observed. In addition, recent passive acoustic research in Cook Inlet by the Alaska Department of Fish and Game and the National Marine Mammal Laboratory have indicated that harbor porpoises occur in the area more frequently than previously thought, particularly in the West Foreland area in the spring (NMFS 2011); however overall numbers are still unknown at this time.

Dall's Porpoise (Phocoenoides dalli)

Dall's porpoise are widely distributed throughout the North Pacific Ocean including Alaska, although they are not found in upper Cook Inlet and the shallower waters of the Bering, Chukchi, and Beaufort Seas (Allen and Angliss 2014). Compared to harbor porpoise, Dall's porpoise prefer the deep offshore and shelf slope waters. The Alaskan population has been estimated at 83,400 animals (Allen and Angliss 2014), making it one of the more common cetaceans in the state. Dall's porpoise have been observed in lower Cook Inlet, including Kachemak Bay and near Anchor Point (Owl Ridge 2014), but sightings there are rare. There is a remote chance that Dall's porpoise might be encountered during seismic operations along the Kenai Peninsula.

Minke Whale (Balaenoptera acutorostra)

Minke whales are the smallest of the rorqual group of baleen whales reaching lengths of up to 35 feet. They are also the most common of the baleen whales, although there are no population estimates for the North Pacific, although estimates have been made for some portions of Alaska. Zerbini *et al.* (2006) estimated the coastal population between Kenai Fjords and the Aleutian Islands at 1,233 animals.

During Cook Inlet-wide aerial surveys conducted from 1993 to 2004, minke whales were encountered only twice (1998, 1999), both times off Anchor Point 16 miles northwest of Homer. A minke whale was also reported off Cape Starichkof in 2011 (A. Holmes, pers. comm.) and 2013 (E. Fernandez and C. Hesselbach, pers. comm.), suggesting this location is regularly used by minke whales, including during the winter. Recently, several minke whales were recorded off Cape Starichkof in early summer 2013 during exploratory drilling conducted there (Owl Ridge 2014). There are no records north of Cape Starichkof, and this species is unlikely to be seen in upper Cook Inlet. There is a chance of encountering this whale during seismic operations along the Kenai Peninsula in lower Cook Inlet.

Gray Whale (Eschrichtius robustus)

Numbers of gray whales in Cook Inlet are small compared to the overall population (18,017 individuals). However, Apache marine mammal observers recorded nine sightings of nine individuals (including possible resights of the same animals) from May–July 2012. Of those sightings, seven were observed from project vessels, and two were observed from land-based observation stations. The eastern North Pacific gray whales observed in Cook Inlet are likely migrating to summer feeding grounds in the Bering, Chukchi, and Beaufort Seas, though a small number feed along the coast between Kodiak Island and northern California (Matkin, 2009; Carretta *et al.*, 2014). NMFS aerial surveys flown annually in June have not sighted a gray whale during survey season since 2001. Occurrences in the seismic survey area (especially in the upper parts of the Inlet) are expected to be low.

Two species of pinnipeds may be encountered in Cook Inlet: Harbor seal and Steller sea lion.

Harbor Seal (Phoca vitulina)

Harbor seals inhabit the coastal and estuarine waters of Cook Inlet. Historically, harbor seals have been more abundant in lower Cook Inlet than in upper Cook Inlet (Rugh *et al.*, 2005a,b). Harbor seals are non-migratory; their movements are associated with tides, weather, season, food availability, and reproduction. The major haulout sites for harbor seals are located in lower Cook Inlet, and their presence in the upper inlet coincides with seasonal runs of prey species. For example, harbor seals are commonly observed along the Susitna River and other tributaries along upper Cook Inlet during the eulachon and salmon migrations (NMFS, 2003). During aerial surveys of upper Cook Inlet in 2001, 2002, and 2003, harbor seals were observed 24 to 96 km (15 to 60 mi) south-southwest of Anchorage at the Chickaloon, Little Susitna, Susitna, Ivan, McArthur, and Beluga Rivers (Rugh *et al.*, 2005). NMFS aerial surveys flown in June have reported sightings ranging from 956 to 2037 harbor seals over the course of surveys from 2000 to 2012. Apache aerial observers recorded approximately 900 harbor seals north of the Forelands in 2012 (Lomac-MacNair *et al.*, 2013). Moreover, preliminary reports from Apache's 2014 vessel, aerial, and land observations suggest harbor seals may be more abundant north of the Forelands than previously understood. During the 2D test program in March 2011, two harbor seals were observed by vessel-based PSOs. On March 25, 2011, one harbor seal was observed approximately 400 m (0.2 mi) from the *M/V Miss Diane.* At the time of the observation, the vessel was operating the positioning pinger, and PSOs instructed the operator to implement a shut-down. The pinger was shut down for 30 minutes while PSOs monitored the area and re-started the device when the animal was not sighted again during the 30 minute site clearing protocol. No unusual behaviors were reported during the time the animal was observed. The second harbor seal was observed on March 26, 2011, by vessel-based PSO onboard the *M/V Dreamcatcher* approximately 4,260 m (2.6 mi) from the source vessel, which was operating the 10 in^3 airgun at the time. NMFS and Apache do not anticipate encountering large aggregations of seals (the closest known haulout site to the action area is located on Kalgin Island, which is approximately 22 km [14 mi] south of the McArthur River), but we do expect to see individual harbor seals (Boveng *et al.*, 2011); especially during large fish runs in the various rivers draining into Cook Inlet.

Important harbor seal life functions, such as breeding and molting may occur within portions of Apache's survey area in June and August, but the co-occurrence is expected to be minimal. From November through January, harbor seals leave Cook Inlet to forage in Shelikof Strait (Boveng *et al.*, 2007).

Steller Sea Lion (Eumetopia jubatus)

Two separate stocks of Steller sea lions are recognized within U.S. waters: An eastern DPS, which includes animals east of Cape Suckling, Alaska; and a western DPS, which includes animals west of Cape Suckling (NMFS, 2008). Individuals in Cook Inlet are considered part of the western DPS, which is listed as endangered under the ESA.

Regional variation in trends in Steller sea lion pup counts in 2000–2012 is similar to that of non-pup counts (Johnson and Fritz, 2014). Overall, there is strong evidence that pup counts in the western stock in Alaska increased (1.45 percent annually). Between 2004 and 2008, Alaska western non-pup counts increased only 3%: Eastern Gulf of Alaska (Prince William Sound area) counts were higher and Kenai Peninsula through Kiska Island counts were stable, but western Aleutian counts continued to decline. Johnson and Fritz (2014) analyzed western Steller sea lion population trends in Alaska and noted that there was strong evidence that non-pup counts in the western stock in Alaska increased between 2000 and 2012 (average rate of 1.67 percent annually). However, there continues to be considerable regional variability in recent trends across the range in Alaska, with strong evidence of a positive trend east of Samalga Pass and strong evidence of a decreasing trend to the west (Allen and Angliss, 2014).

Steller sea lions primarily occur in lower, rather than upper Cook Inlet and are rarely sighted north of Nikiski on the Kenai Peninsula. NMFS aerial surveys conducted in June 2000–2012, primarily in lower Cook Inlet, indicated presence of 0 to 104 Steller sea lions. Haul-outs and rookeries are located near, but outside of Cook Inlet at Gore Point, Elizabeth Island, Perl Island, and Chugach Island (NMFS, 2008). No Steller sea lion haul-outs or rookeries are located in the vicinity of the seismic survey. Furthermore, no sightings of Steller sea lions were reported by Apache during the 2D test program in March 2011. During the 3D seismic survey, one Steller sea lion was observed from the *M/V Dreamcatcher* on August 18, 2012, during a period when the air guns were not active. Although Apache has requested takes of Steller sea lions, Steller sea lions would be rare in the action area during seismic survey operations.

Apache's application contains more information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2014 SAR is available on the Internet at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013_final.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that components (*e.g.,* seismic airgun operations, vessel movement) of the specified activity, including mitigation, may impact marine mammals. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, the "Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Operating active acoustic sources, such as airgun arrays, has the potential for adverse effects on marine mammals. The majority of anticipated impacts would be from the use of acoustic sources.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data. Southall *et al.* (2007) designate "functional hearing groups" for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (note that animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 30 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 100 kHz; and
- Otariid pinnipeds in Water: Functional hearing is estimated to occur between approximately 100 Hz and 40 kHz.

As mentioned previously in this document, nine marine mammal species (seven cetacean and two pinniped species) are likely to occur in the seismic survey area. Of the four cetacean species likely to occur in Apache's project area, one is classified as a low-frequency cetacean (gray whale), two are classified as mid-frequency cetaceans (*i.e.,* beluga and killer whales), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). Of the two pinniped species likely to occur in Apache's project area, one is classified as a phocid (*i.e.,* harbor seal), and one is classified as an otariid (*i.e.,* Steller sea lion). A species functional hearing group is a consideration when we analyze the effects of its exposure to different frequencies of sound.

1. Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun pulses might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing threshold shifts, and non-auditory effects (Richardson *et al.,* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.,* 1995).

Tolerance: Numerous studies have shown that pulsed sounds from air guns are often readily detectable in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers from operating survey vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. In general, pinnipeds and small odontocetes (toothed whales) seem to be more tolerant of exposure to air gun pulses than baleen whales. Although various toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times, mammals of both types have shown no overt reactions. Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (*i.e.,* active versus silent).

Behavioral Disturbance: Marine mammals may behaviorally respond when exposed to anthropogenic noise. These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict. The consequences of behavioral modification to individual fitness can range from none up to potential changes to growth, survival, or reproduction, depending on the context, duration, and degree of behavioral modification. Examples of behavioral modifications that could impact growth, survival or reproduction include: Drastic changes in diving/surfacing/swimming patterns that lead to stranding (such as those associated with beaked whale strandings related to exposure to military mid-frequency tactical sonar); longer-term abandonment of habitat that is specifically important for feeding, reproduction, or other critical needs, or significant disruption of feeding or social interaction resulting in substantive energetic costs, inhibited breeding, or prolonged or permanent cow-calf separation.

The likelihood and severity of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography, context of the exposure) and is also difficult to predict (Southall *et al.*, 2007).

Toothed whales. Few systematic data are available describing reactions of toothed whales to noise pulses. However, systematic work on sperm whales (Tyack *et al.*, 2003) has yielded an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.*, Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005). Stone *et al.* (2003) reported reduced sighting rates of small odontocetes during periods of shooting during seismic surveys with large airgun arrays. Moulton and Miller (2004) also found that the range of audibility of seismic pules for mid-sized odontecetes was largely underestimated by models.

Seismic operators and marine mammal observers sometimes see dolphins and other small toothed whales near operating airgun arrays, but, in general, there seems to be a tendency for most delphinids to show some avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes move away or maintain a somewhat greater distance from the vessel when a large array of airguns is operating than when it is silent (*e.g.*, Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003). The beluga may be a species that (at least in certain geographic areas) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10–20 km (6.2–12.4 mi) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, indicating that belugas may avoid seismic operations at distances of 10–20 km (6.2–12.4 mi) (Miller *et al.*, 2005).

Captive bottlenose dolphins and beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2002, 2005). However, the animals tolerated high received levels of sound (pk–pk level >200 dB re 1 μPa) before exhibiting aversive behaviors.

Observers stationed on seismic vessels operating off the United Kingdom from 1997–2000 have provided data on the occurrence and behavior of various toothed whales exposed to seismic pulses (Stone, 2003; Gordon *et al.*, 2004). Killer whales were found to be significantly farther from large airgun arrays during periods of shooting compared with periods of no shooting. The displacement of the median distance from the array was approximately 0.5 km (0.3 mi) or more. Killer whales also appear to be more tolerant of seismic shooting in deeper water (illustrating another example of the importance of context in predicting responses).

Reactions of toothed whales to large arrays of airguns are variable and, at least for delphinids, seem to be confined to a smaller radius than has been observed for mysticetes. However, based on the limited existing evidence, belugas should not necessarily be grouped with delphinids in the "less responsive" category.

Pinnipeds. Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources used. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.*, 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total displacement volumes of 560 to 1,500 in^3. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.*, 1995a). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals, grey and harbor seals, to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998). Even if reactions of the species occurring in the activity area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

Masking: Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

Masking occurs when anthropogenic sounds and signals (that the animal utilizes) overlap at both spectral and temporal scales. For the airgun sound generated from the seismic surveys, sound will consist of low frequency (under 500 Hz) pulses with extremely short durations (less than one second). Lower frequency man-made sounds are more likely to affect detection of potentially important natural sounds such as surf and prey noise, or communication calls for low frequency specialists. There is little concern regarding masking near the sound source due to the brief duration of these pulses and relatively longer silence between air gun shots (approximately 12 seconds). However, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be "stretched" to seconds with long decays (Madsen *et al.*, 2006), and shorter intervals between pulses, although the intensity of the sound is greatly reduced.

This could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (*e.g.*, Clark *et al.*, 2009) and cause increased stress levels (*e.g.*, Foote *et al.*, 2004; Holt *et al.*, 2009); however, few baleen whales are expected to occur within the action area. Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior by shifting call frequencies, and/or increasing call volume and vocalization rates. For example, blue whales were found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark, 2010). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.*, 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *et al.*, 2000). Additionally, beluga whales have been known to change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.*, 1985; Lesage *et al.*, 1999; Scheifele *et al.*, 2005). Although some degree of masking is inevitable when high levels of manmade broadband sounds are introduced into the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.*, 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.*, 1986; Dubrovskiy, 1990; Bain *et al.*, 1993; Bain and Dahlheim, 1994). Toothed whales and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.*, 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.*, 1999). A few marine mammal species are known to increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1993, 1999; Terhune, 1999; Foote *et al.*, 2004; Parks *et al.*, 2007, 2009; Di Iorio and Clark, 2009; Holt *et al.*, 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Directional hearing has been demonstrated at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.*, 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.*, sounds must be louder for an animal to detect them) following exposure to loud and/or persistent sound, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.*, there is complete recovery), can occur in specific frequency ranges (*i.e.*, an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.*, 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). In the case of the seismic survey, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS.

PTS is considered auditory injury (Southall *et al.*, 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.*, 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.*, 2009; Mooney *et al.*, 2009a, 2009b; Popov *et al.*, 2011a, 2011b; Kastelein *et al.*, 2012a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.*, 1999, 2005; Kastelein *et al.*, 2012b).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Similarly, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the seismic surveys in Cook Inlet. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent as those of cetaceans, and occasionally they seem to be attracted to operating seismic vessels (NMFS, 2010).

Non-Auditory Physical Effects: Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (*i.e.*, beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical "fight or flight" response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with "stress." These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.*, 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called "distress" (sensu Seyle, 1950) or "allostatic loading" (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response due to exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as "distress" upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (*e.g.*, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.*, goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the effects of sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, we assume that reducing a marine mammal's ability to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. However, marine mammals also might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS. Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.*, 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses, and no beaked whale species occur in Apache's seismic survey area.

In general, very little is known about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. In addition, marine mammals that show behavioral avoidance of seismic vessels, including belugas and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects. Therefore, it is unlikely that such effects would occur during Apache's surveys given the brief duration of exposure and the planned monitoring and mitigation measures described later in this document.

Stranding and Mortality: Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten 1995). Airgun pulses are less energetic and their peak amplitudes have slower rise times. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to air gun pulses, even in the case of large air gun arrays.

However, in past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times, including in the **Federal Register** notice announcing the IHA for Apache Alaska's first seismic survey in 2012. Readers are encouraged to review NMFS's response to comments on this matter found in 69 FR 74905 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), 71 FR 49418 (August 23, 2006), and 77 FR 27720 (May 11, 2012).

Beluga whale strandings in Cook Inlet are not uncommon; however, these events often coincide with extreme tidal fluctuations ("spring tides") or killer whale sightings (Shelden *et al.*, 2003). For example, in August 2012, a group of Cook Inlet beluga whales stranded in the mud flats of Turnagain Arm during low tide and were able to swim free with the flood tide. No strandings or marine mammals in distress were observed during the 2D test survey conducted by Apache in March 2011, and none were reported by Cook Inlet inhabitants. Based on our consideration of the best available information, NMFS does not expect any marine mammals will incur serious injury or mortality in Cook Inlet or strand as a result of the seismic survey.

2. Potential Effects From Pingers on Marine Mammals

Active acoustic sources other than the airguns will be used for Apache's 5-year oil and gas exploration seismic survey program in Cook Inlet. The specifications for the pingers (source levels and frequency ranges) were provided in the FR notice of the proposed rule (80 FR 9510). In general, pingers are known to cause behavioral disturbance and are commonly used to deter marine mammals from commercial fishing gear or fish farms.

3. Potential Effects From Aircraft Noise on Marine Mammals

Apache plans to utilize aircraft to conduct aerial surveys near river mouths in order to identify locations or congregations of beluga whales and other marine mammals prior to the commencement of operations. The aircraft will not be used every day but will be used for surveys near river mouths. Survey aircraft will fly at an altitude of about 300 m (1,000 ft) when practicable and when weather conditions allow. In the event of a marine mammal sighting, aircraft will try to maintain a radial distance of 457 m (1,500 ft) from the marine mammal(s). Aircraft will avoid approaching marine mammals from head-on, flying over or passing the shadow of the aircraft over the marine mammals.

Studies on the reactions of cetaceans to aircraft show little negative response (Richardson *et al.,* 1995). In general, reactions range from sudden dives and turns and are typically found to decrease if the animals are engaged in feeding or social behavior. Whales with calves or in confined waters may show more of a response. There has been little or no evidence of marine mammals in the Arctic responding to aircraft at altitudes greater than about 300 m (1,000 ft), during the past three decades. (NMFS, unpublished data). No change in beluga swim directions or other noticeable reactions have been observed during the Cook Inlet aerial surveys flown from 183 to 244 m (600 to 800 ft) since 1993 (*e.g.,* Rugh *et al.,* 2000). Therefore, NMFS expects no effects on beluga whales or other cetaceans due to aerial surveys associated with this action.

The majority of observations of pinnipeds reacting to aircraft noise are associated with animals hauled out on land or ice. There are few data describing the reactions of pinnipeds in water to aircraft (Richardson *et al.,* 1995). In the presence of aircraft, pinnipeds hauled out for pupping or molting generally became alert and then rushed or slipped (when on ice) into the water. Stampedes often result from this response and may increase pup mortality due to crushing or an increased rate of pup abandonment. The greatest reactions from hauled-out pinnipeds were observed when low flying aircraft passed directly above the animal(s) (Richardson *et al.,* 1995). Although noise associated with aircraft activity could cause hauled out pinnipeds to rush into the water, there are no known haul out sites in the vicinity of the survey site. Therefore, the operation of aircraft during the seismic survey is not expected to result in the harassment of pinnipeds. To minimize the noise generated by aircraft, Apache will follow NMFS's Marine Mammal Viewing Guidelines and Regulations found on the Internet at: *http://www.alaskafisheries.noaa.gov/protectedresources/mmv/guide.htm.*

4. Vessel Impacts

Vessel activity and noise associated with vessel activity will temporarily increase in the action area during Apache's seismic survey as a result of the operation of nine vessels. To minimize the effects of vessels and noise associated with vessel activity, Apache will follow NMFS's Marine Mammal Viewing Guidelines and Regulations and will alter heading or speed if a marine mammal gets too close to a vessel. In addition, vessels will be operating at slow speed (2–4 knots) when conducting surveys and in a purposeful manner to and from work sites in as direct a route as possible. Marine mammal monitoring observers and passive acoustic devices will alert vessel captains as animals are detected to ensure safe and effective measures are applied to avoid coming into direct contact with marine mammals. Therefore, NMFS neither anticipates nor authorizes takes of marine mammals from ship strikes.

Odontocetes, such as beluga whales, killer whales, and harbor porpoises, often show tolerance to vessel activity; however, they may react at long distances if they are confined by ice, shallow water, or were previously harassed by vessels (Richardson *et al.,* 1995). Beluga whale response to vessel noise varies greatly from tolerance to extreme sensitivity depending on the activity of the whale and previous experience with vessels (Richardson *et al.,* 1995). Reactions to vessels depend on whale activities and experience, habitat, boat type, and boat behavior (Richardson *et al.,* 1995) and may include behavioral responses, such as altered headings or avoidance (Blane and Jaakson, 1994; Erbe and Farmer, 2000); fast swimming; changes in vocalizations (Lesage *et al.,* 1999; Scheifele *et al.,* 2005); and changes in dive, surfacing, and respiration patterns.

There are few data published on pinniped responses to vessel activity, and most of the information is anecdotal (Richardson *et al.,* 1995). Generally, sea lions in water show tolerance to close approaching vessels and sometimes show interest in fishing vessels. They are less tolerant when hauled out on land; however, they rarely react unless the vessel approaches within 100–200 m (330–660 ft; reviewed in Richardson *et al.,* 1995).

5. Entanglement

Although some of Apache's equipment contains cables or lines, the risk of entanglement is extremely remote. The material used by Apache and the amount of slack in lines is not anticipated to allow for marine mammal entanglements. No incidents of entanglement have been reported from any seismic operators in Cook Inlet, and therefore injury or mortality from entanglement is not anticipated.

Anticipated Effects on Marine Mammal Habitat

This section describes the potential impacts to marine mammal habitat from the specified activity. Because the marine mammals in the area feed on fish and/or invertebrates there is also information on the species typically preyed upon by the marine mammals in the area. As noted earlier, upper Cook Inlet is an important feeding and calving area for the Cook Inlet beluga whale, and critical habitat has been designated for this species in the seismic survey area.

Common Marine Mammal Prey in the Project Area

Fish are the primary prey species for marine mammals in upper Cook Inlet. Beluga whales feed on a variety of fish, shrimp, squid, and octopus (Burns and Seaman, 1986). Common prey species in Cook Inlet include salmon, eulachon and cod. Harbor seals feed on fish such as pollock, cod, capelin, eulachon, Pacific herring, and salmon, as well as a variety of benthic species, including crabs, shrimp, and cephalopods. Harbor seals are also opportunistic feeders with their diet varying with season and location. The preferred diet of the harbor seal in the Gulf of Alaska consists of pollock, octopus, capelin, eulachon, and Pacific herring (Calkins, 1989). Other prey species include cod, flat fishes, shrimp, salmon, and squid (Hoover, 1988). Harbor porpoises feed primarily on Pacific herring, cod, whiting (hake), pollock, squid, and octopus (Leatherwood *et al.,* 1982). In the upper Cook Inlet area, harbor porpoise feed on squid and a variety of small schooling fish, which would likely include Pacific herring and eulachon (Bowen and Siniff, 1999; NMFS, unpublished data). Killer whales feed on either fish or other marine mammals depending on genetic type (resident versus transient respectively). Killer whales in Knik Arm are typically the transient type (Shelden *et al.,* 2003) and feed on beluga whales and other marine mammals, such as harbor seal and harbor porpoise. The Steller sea lion diet consists of a variety of fishes (capelin, cod, herring, mackerel, pollock, rockfish, salmon, sand lance, etc.), bivalves, squid, octopus, and gastropods.

Potential Impacts of Sound on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.,* 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background sound level.

Fishes have evolved a diversity of sound generating organs and acoustic signals of various temporal and spectral contents. Fish sounds vary in structure, depending on the mechanism used to produce them (Hawkins, 1993). Generally, fish sounds are predominantly composed of low frequencies (less than 3 kHz). Fishes produce sounds that are associated with behaviors that include territoriality, mate search, courtship, and aggression. It has also been speculated that sound production may provide the means for long distance communication and communication under poor underwater visibility conditions (Zelick *et al.*, 1999), although the fact that fish communicate at low-frequency sound levels where the masking effects of ambient noise are naturally highest suggests that very long distance communication would rarely be possible.

Since objects in the water scatter sound, fish are able to detect these objects through monitoring the ambient noise. Therefore, fish are probably able to detect prey, predators, conspecifics, and physical features by listening to environmental sounds (Hawkins, 1981). There are two sensory systems that enable fish to monitor the vibration-based information of their surroundings. The two sensory systems, the inner ear and the lateral line, constitute the acoustico-lateralis system.

Although the hearing sensitivities of very few fish species have been studied to date, it is becoming obvious that the intra- and inter-specific variability is considerable (Coombs, 1981). Nedwell *et al.* (2004) compiled and published available fish audiogram information. A noninvasive electrophysiological recording method known as auditory brainstem response is now commonly used in the production of fish audiograms (Yan, 2004). Popper and Carlson (1998) and the Navy (2001) found that fish generally perceive underwater sounds in the frequency range of 50–2,000 Hz, with peak sensitivities below 800 Hz. Even though some fish are able to detect sounds in the ultrasonic frequency range, the hearing thresholds at these higher frequencies tend to be considerably higher than those at the lower end of the auditory hearing frequency range.

Fish are sensitive to underwater impulsive sounds due to swim bladder resonance. As the pressure wave passes through a fish, the swim bladder is rapidly squeezed as the high pressure wave, and then the under pressure component of the wave, passes through the fish. The swim bladder may repeatedly expand and contract at the high sound pressure levels, creating pressure on the internal organs surrounding the swim bladder.

Literature relating to the impacts of sound on marine fish species can be divided into the following categories: (1) Pathological effects; (2) physiological effects; and (3) behavioral effects. Pathological effects include lethal and sub-lethal physical damage to fish; physiological effects include primary and secondary stress responses; and behavioral effects include changes in exhibited behaviors of fish. Behavioral changes might be a direct reaction to a detected sound or a result of the anthropogenic sound masking natural sounds that the fish normally detect and to which they respond. The three types of effects are often interrelated in complex ways. For example, some physiological and behavioral effects could potentially lead to the ultimate pathological effect of mortality. Hastings and Popper (2005) reviewed what is known about the effects of sound on fishes and identified studies needed to address areas of uncertainty relative to measurement of sound and the responses of fishes. Popper *et al.* (2003/2004) also published a paper that reviews the effects of anthropogenic sound on the behavior and physiology of fishes.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.*, 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (Blaxter *et al.*, 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.*, 1983; Ona, 1988; Ona and Godo, 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken, 1992; Olsen, 1979; Ona and Godo, 1990; Ona and Toresen, 1988). However, other researchers have found that fish such as polar cod, herring, and capelin are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.*, 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.*, 1995).

Carlson (1994), in a review of 40 years of studies concerning the use of underwater sound to deter salmonids from hazardous areas at hydroelectric dams and other facilities, concluded that salmonids were able to respond to low-frequency sound and to react to sound sources within a few feet of the source. He speculated that the reason that underwater sound had no effect on salmonids at distances greater than a few feet is because they react to water particle motion/acceleration, not sound pressures. Detectable particle motion is produced within very short distances of a sound source, although sound pressure waves travel farther.

Potential Impacts to the Benthic Environment

Apache's seismic survey requires the deployment of a submersible recording system in the inter-tidal and marine zones. An autonomous "nodal" (*i.e.*, no cables) system would be placed on the seafloor by specific vessels in lines parallel to each other with a node line spacing of 402 m (0.25 mi). Each nodal "patch" would have six to eight node lines parallel to each other. The lines generally run perpendicular to the shoreline. An entire patch would be placed on the seafloor prior to airgun activity. As the patches are surveyed, the node lines would be moved either side to side or inline to the next location. Placement and retrieval of the nodes may cause temporary and localized increases in turbidity on the seafloor. The substrate of Cook Inlet consists of glacial silt, clay, cobbles, pebbles, and sand (Sharma and Burrell, 1970). Sediments like sand and cobble dissipate quickly when suspended, but finer materials like clay and silt can create thicker plumes that may harm fish; however, the turbidity created by placing and removing nodes on the seafloor would settle to background levels within minutes after the cessation of activity. In addition, seismic noise will radiate throughout the water column from airguns and pingers until it dissipates to background levels.

Habitat Impacts—Conclusion

No studies have demonstrated that seismic noise affects the life stages, condition, or amount of food resources (fish, invertebrates, eggs) used by marine mammals, except when exposed to sound levels within a few meters of the seismic source or in a few very isolated cases. Where fish or invertebrates did respond to seismic noise, the effects were temporary and of short duration. The effects are also largely behavioral, rather than physiological. Consequently, disturbance to fish species due to the activities associated with the seismic survey (*i.e.*, placement and retrieval of nodes and noise from sound sources) would be short term and fish would be expected to return to their pre-disturbance behavior once seismic survey activities cease.

Based on the preceding discussion, the activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations. Behavioral effects may be exhibited by fish species but as discussed above, these are also expected to be short term behavioral effects.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Mitigation Measures in Apache's Application

For the mitigation measures, Apache listed the following protocols to be implemented during its seismic survey program in Cook Inlet, which were incorporated into NMFS' proposed rule.

1. Operation of Mitigation Airgun at Night

Apache will conduct both daytime and nighttime operations. Nighttime operations would be initiated only if a "mitigation airgun" (typically the 10 in^3) has been continuously operational from the time that PSO monitoring has ceased for the day. Seismic activity would not ramp up from an extended shut-down (*i.e.*, when the airgun has been down with no activity for at least 10 minutes) during nighttime operations, and survey activities would be suspended until the following day. At night, the vessel captain and crew would maintain lookout for marine mammals and would order the airgun(s) to be shut down if marine mammals are observed in or about to enter the established exclusion zones.

2. Exclusion and Disturbance Zones

Apache will establish exclusion zones to avoid Level A harassment ("injury exclusion zone") of all marine mammals and to minimize Level B harassment ("disturbance exclusion zone") for any number of belugas and for groups of five or more killer whales or harbor porpoises detected within the designated zones. The injury exclusion zone will correspond to the area around the source within which received levels equal or exceed 180 dB re 1 μPa [rms] for cetaceans and 190 dB re 1 μPa [rms] for pinnipeds and Apache will shut down or power down operations if any marine mammals are seen approaching or entering this zone (more detail below). The disturbance exclusion zone will correspond to the area around the source within which received levels equal or exceed 160 dB re 1 μPa [rms] and Apache will implement power down and/or shutdown measures, as appropriate, if any beluga whales or group of five or more killer whales or harbor porpoises are seen entering or approaching the disturbance exclusion zone.

3. Power Down and Shutdown Procedures

A power down is the immediate reduction in the number of operating energy sources from a full array firing to a mitigation airgun. A shutdown is the immediate cessation of firing of all energy sources. The arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full arrays but is outside the applicable exclusion zone of the single source. If a marine mammal is sighted within the applicable exclusion zone of the single energy source, the entire array will be shutdown (*i.e.*, no sources firing). Following a power down or a shutdown, airgun activity will not resume until the marine mammal has clearly left the applicable injury or disturbance exclusion zone. The animal will be considered to have cleared the zone if it: (1) Is visually observed to have left the zone; (2) has not been seen within the zone for 15 minutes in the case of pinnipeds and small odontocetes; or (3) has not been seen within the zone for 30 minutes in the case of large odontocetes, including killer whales and belugas.

4. Ramp-Up Procedures

A ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of air guns firing until the full volume is achieved. The purpose of a ramp-up (or "soft start") is to "warn" cetaceans and pinnipeds in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the seismic survey, the seismic operator will ramp up the airgun array slowly. NMFS requires that the rate of ramp-up to be no more than 6 dB per 5-minute period. Ramp-up is used at the start of airgun operations, after a power- or shut-down, and after any period of greater than 10 minutes in duration without airgun operations (*i.e.*, extended shutdown).

A full ramp-up after a shutdown will not begin until there has been a minimum of 30 minutes of observation of the applicable exclusion zone by PSOs to assure that no marine mammals are present. The entire exclusion zone must be visible during the 30-minute lead-in to a full ramp up. If the entire exclusion zone is not visible, then ramp-up from a cold start cannot begin. If a marine mammal(s) is sighted within the injury exclusion zone during the 30-minute watch prior to ramp-up, ramp-up will be delayed until the marine mammal(s) is sighted outside of the zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds (*e.g.* harbor porpoises, harbor seals, and Steller sea lions), or 30 minutes for large odontocetes (*e.g.*, killer whales and beluga whales).

5. Speed or Course Alteration

If a marine mammal is detected outside the Level A injury exclusion zone and, based on its position and the relative motion, is likely to enter that zone, the vessel's speed and/or direct course may, when practical and safe, be changed to also minimize the effect on the seismic program. This can be used in coordination with a power down procedure. The marine mammal activities and movements relative to the seismic and support vessels will be closely monitored to ensure that the marine mammal does not approach within the applicable exclusion radius. If the mammal appears likely to enter the exclusion radius, further mitigative actions will be taken, *i.e.*, either further course alterations, power down, or shut down of the airgun(s).

6. Measures for Beluga Whales and Groups of Killer Whales and Harbor Porpoises

The following additional protective measures for beluga whales and groups of five or more killer whales and harbor porpoises are required. Specifically, a 160-dB vessel monitoring zone would be established and monitored in Cook Inlet during all seismic surveys. If a beluga whale or groups of five or more killer whales and/or harbor porpoises are visually sighted approaching or within the 160-dB disturbance zone, survey activity would not commence until the animals are no longer present within the 160-dB disturbance zone. Whenever beluga whales or groups of five or more killer whales and/or harbor porpoises are detected approaching or within the 160-dB disturbance zone, the airguns may be powered down before the animal is within the 160-dB disturbance zone, as an alternative to a complete shutdown. If a power down is not sufficient, the sound source(s) shall be shut-down until the animals are no longer present within the 160-dB zone.

Additional Mitigation Measures Required by NMFS

In addition to the mitigation measures proposed by Apache, NMFS requires implementation of the following mitigation measures.

Susitna Delta Exclusion Zone

Apache must not operate airguns within 10 miles (16 km) of the mean lower low water (MLLW) line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15. The purpose of this mitigation measure is to protect beluga whales in this portion of designated critical habitat that is particularly important for beluga whale feeding and calving between mid-April and mid-October. This is a change from the proposed rule, which proposed an exclusion from the mean higher high water line (MHHW). The range of the setback required by NMFS is intended to protect this important habitat area during high beluga use and also to create an effective buffer where sound does not encroach on this habitat. This seasonal exclusion will be in effect from April 15–October 15. Seismic exploration and associated activities may occur within this area from October 16–April 14.

Mitigation Airgun

The mitigation airgun will be operated at approximately one shot per minute, only during daylight and when there is good visibility, and will not be operated for longer than 3 hours in duration. In cases when the next start-up after the turn is expected to be during low light or low visibility, use of the mitigation airgun may be initiated 30 minutes before local sunset or low visibility conditions occur and may be operated until the start of the next seismic acquisition line but not longer than three hours continuously. The mitigation gun must still be operated at approximately one shot per minute.

Passive Acoustic Monitoring (PAM)

NMFS also requires that Apache use passive acoustic monitoring (PAM) during non-daylight hours for marine mammal detections as well as use PAM to confirm the lack of marine mammals in the potential ensonified area to ramp up airguns after a power down or shutdown in non-daylight hours, with the success and potential continuation of this method to be reviewed at the annual LOA stage. Following a power down or shutdown a trained PSO must use detection equipment and listen for 30 minutes. When 30 minutes have passed without detection of beluga, humpback whale, or Steller sea lion detection, the ramp-up can begin. NMFS will work with Apache before issuance of an LOA to design an appropriate system for this detection and will evaluate the effectiveness when considering subsequent LOAs.

Stranding Measures

NMFS requires that Apache suspend seismic operations if a live marine mammal stranding is reported in Cook Inlet coincident to, or within 72 hours of, seismic survey activities involving the use of airguns (regardless of any suspected cause of the stranding). The shutdown must occur if the stranding location is within a radius two times that of the 160 dB isopleth of the largest airgun array configuration in use. This distance was chosen to create an additional buffer beyond the distance at which animals would typically be considered harassed, as animals involved in a live stranding event are likely compromised, with potentially increased susceptibility to stressors, and the goal is to decrease the likelihood that they are further disturbed or impacted by the seismic survey, regardless of what the original cause of the stranding event was. Shutdown procedures will remain in effect until NMFS determines and advises Apache that all live animals involved in the stranding have left the area (either of their own volition or following herding by responders).

Measures for Unexpected Species

Finally, NMFS requires that if during the seismic activities any marine mammal species are encountered for which take is not authorized, and that are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms), then Apache must alter speed or course or power down or shut-down the sound source to avoid take of those species.

Mitigation Conclusions

NMFS has carefully evaluated Apache's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measures are expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of seismic airguns, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of seismic airguns or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of seismic airguns or other activities expected to

result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable adverse impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Apache submitted information regarding marine mammal monitoring to be conducted during seismic operations as part of the proposed rule application. That information can be found in Sections 12 and 14 of the application.

Monitoring measures proposed by the applicant or prescribed by NMFS should contribute to or accomplish one or more of the following top-level goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, *i.e.*, presence, abundance, distribution, and/or density of species.

2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.* sound or visual stimuli), through better understanding of one or more of the following: The action itself and its environment (*e.g.* sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.* life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.* age class of exposed animals or known pupping, calving or feeding areas).

3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.*, at what distance or received level).

4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: The long-term fitness and survival of an individual; or the population, species, or stock (*e.g.*, through effects on annual rates of recruitment or survival).

5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.*, through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).

6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.

7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.

8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

Monitoring Results From Previously Authorized Activities

As noted earlier in this document, NMFS has issued three IHAs to Apache for this same type of activity. No seismic surveys were conducted under the IHA issued in February 2013 (became effective March 1, 2013). Apache conducted seismic operations under the first IHA issued in April 2012. Below is a summary of the results from the monitoring conducted in accordance with the 2012 and 2014 IHAs.

Marine mammal monitoring was conducted in central Cook Inlet between May 6 and September 30, 2012, which resulted in a total of 6,912 hours of observations. There was also monitoring from April 2, 2014, through June 27, 2014, which resulted in a total of 3,029 hours of observations. Monitoring was conducted from the two seismic survey vessels, a mitigation/monitoring vessel, four land platforms, and an aerial platform (either a helicopter or small fixed wing aircraft). PSOs monitored from the seismic vessels, mitigation/monitoring vessel, and land platforms during all daytime seismic operations. Aerial overflights were conducted 1–2 times daily over the survey area and surrounding coastline, including the major river mouths, to monitor for larger concentrations of marine mammals in and around the survey site. PAM took place from the mitigation/monitoring vessel during all nighttime seismic survey operations and most daytime seismic survey operations in 2012. During the entire 2012 survey season, Apache's PAM equipment yielded only six confirmed marine mammal detections, one of which was a Cook Inlet beluga whale.

Six identified species and three unidentified species of marine mammals were observed from the vessel, land, and aerial platforms between May 6 and September 30, 2012. Eight identified species and three unidentified species were observed in 2014. The species observed included Cook Inlet beluga whales, harbor seals, harbor porpoises, Dall's porpoises, humpback whale, minke whale, Steller sea lions, gray whales, and California sea lions. PSOs also observed unidentified species, including a large cetacean, pinniped, and marine mammal. There were a total of 882 sightings and an estimated 5,232 individuals (the number of individuals is typically higher than the number of sightings because a single sighting may consist of multiple individuals) in 2012. There were a total of 645 sightings and an estimated 922 individuals in 2014. Harbor seals were the most frequently observed marine mammal at 563 sightings of approximately 3,471 individuals in 2012 and 492 sightings of approximately 613 individuals in 2014. In 2012 there were 151 sightings of approximately 1,463 individual belugas, and 57 sightings of approximately 170 individual belugas in 2014. In 2012, there were 137 sightings of approximately 190 individual harbor porpoises, with 77 sightings of approximately 113 individuals in 2014.

There were nine grey whales seen in 2012 but only one seen in 2014. Steller sea lions were observed on three separate occasions in 2012 (4 individuals), while seen only twice (2 individuals) in 2014. No killer whales were observed during seismic survey operations conducted under the 2012 or 2014 IHA. Mitigation measures were implemented for species not included in the IHA to prevent unauthorized takes. In 2012 there were 17 recorded instances of Level B take, which consisted of four harbor porpoises and 13 harbor seals. In 2014, only 29 exposures to the 160dB isopleth were reported: 12 beluga whales, 6 harbor porpoise, 9 harbor seals, and 2 humpback whales. Across both years of activity, behavioral reactions included swimming and traveling, as well as bottlenosing (for harbor porpoises) and diving, sinking, or other submerging behaviors. None of the behavioral responses reported indicate that the impacts of the seismic activity were more severe than anticipated. Many of the observations recorded during these monitoring efforts were sightings made during non-seismic observation efforts.

A total of 88 exclusion zone clearing delays, 154 shutdowns, 7 power downs, 23 shutdowns following a power down, and one speed and course alteration were implemented under the 2012 IHA. In 2014 there were 7 ramp-up delays, and 13 shutdowns.

Based on the information from the 2012 and 2014 monitoring reports, NMFS has determined that Apache complied with the conditions of their IHAs, and we conclude that these results support our original findings that the mitigation measures set forth in the Authorizations effected the least practicable impact on the species or stocks. The monitoring efforts support the take estimation calculations found later in this document for all species, but suggest that the calculation for harbor seals is an overestimate.

Although Apache did not conduct any seismic survey operations under the 2013 IHA, they still conducted marine mammal monitoring surveys between May and August 2013. During those aerial surveys, Apache detected a total of three marine mammal species: Beluga whale; harbor porpoise; and harbor seal. A total of 718 individual belugas, three harbor porpoises, and 919 harbor seals were sighted. Of the 718 observed belugas, 61 were calves. All of the calf sightings occurred in the Susitna Delta area, with the exception of a couple south of the Beluga River and a couple in Turnagain Arm. More than 60 percent of the beluga calf sightings occurred in June (n=39).

Monitoring Measures

1. Visual Vessel-Based Monitoring

Vessel-based monitoring for marine mammals will be done by experienced PSOs throughout the period of marine survey activities. PSOs would monitor the occurrence and behavior of marine mammals near the survey vessel during all daylight periods (nautical dawn to nautical dusk) during operation and during most daylight periods when airgun operations are not occurring. PSO duties would include watching for and identifying marine mammals, recording their numbers, distances, and reactions to the survey operations, and documenting "take by harassment" as defined by NMFS, *i.e.,* exposures above the associated take thresholds.

A minimum number of six PSOs (two per source vessel and two per support vessel) is required onboard the survey vessel to meet the following criteria: (1) 100 percent monitoring coverage during all periods of survey operations in daylight (nautical twilight-dawn to nautical twilight-dusk; (2) maximum of 4 consecutive hours on watch per PSO with at least one hour break between shifts; and (3) maximum of 12 hours of watch time per day per PSO.

PSO teams would consist of NMFS-approved field biologists. An experienced field crew leader would supervise the PSO team onboard the survey vessel. Apache currently plans to have PSOs aboard three vessels: The two source vessels (*M/V Peregrine Falcon* and *M/V Arctic Wolf*) and one support vessel (*M/V Dreamcatcher*). Two PSOs would be on the source vessels, and two PSOs would be on the support vessel to observe and implement the exclusion, power down, and shut down areas. When marine mammals are about to enter or are sighted within designated harassment and exclusion zones, airgun or pinger operations would be powered down (when applicable) or shut down immediately. The vessel-based observers would watch for marine mammals during all periods when sound sources are in operation and for a minimum of 30 minutes prior to the start of airgun or pinger operations after an extended shut down.

Crew leaders and most other biologists serving as observers would be individuals with experience as observers during seismic surveys in Alaska or other areas in recent years.

The observer(s) would watch for marine mammals from the best available vantage point on the source and support vessels, typically the flying bridge. The observer(s) would scan systematically with the unaided eye and 7×50 reticle binoculars. Laser range finders would be available to assist with estimating distance on the two source vessels. Personnel on the bridge would assist the observer(s) in watching for marine mammals.

All observations would be recorded in a standardized format. Data would be entered into a custom database using a notebook computer. The accuracy of the data would be verified by computerized validity data checks as the data are entered and by subsequent manual checks of the database. These procedures would allow for initial summaries of the data to be prepared during and shortly after the completion of the field program, and would facilitate transfer of the data to statistical, geographical, or other programs for future processing and archiving. When a mammal sighting is made, the following information about the sighting would be recorded:

- Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the PSO, apparent reaction to activities (*e.g.,* none, avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;
- Time, location, speed, activity of the vessel (*e.g.,* seismic airguns off, pingers on, etc.), sea state, ice cover, visibility, and sun glare; and
- The positions of other vessel(s) in the vicinity of the PSO location.

The ship's position, speed of support vessels, and water temperature, water depth, sea state, ice cover, visibility, and sun glare would also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

Apache will also monitor for at least 30 minutes following the cessation of seismic surveying. This post-activity monitoring period will provide data for comparisons to marine mammal presence and behavior during seismic activity.

2. Visual Shore-Based Monitoring

In addition to the vessel-based PSOs, Apache will utilize a shore-based station daily, to visually monitor for marine mammals. The location of the shore-based station would need to be sufficiently high to observe marine mammals; the PSOs would be equipped with pedestal mounted "big eye" (20x110) binoculars. The shore-based PSOs would scan the area prior to, during, and after the airgun operations and would be in contact with the vessel-based PSOs via radio to communicate sightings of marine mammals approaching or within the project area. This communication will allow the vessel-based observers to go on a "heightened" state of alert regarding occurrence of marine mammals in the area and aid in timely implementation of mitigation measures. Observations from land-based observers will also be recorded and included in monitoring reports.

3. Aerial-Based Monitoring

Weather and safety permitting, Apache will utilize helicopter or fixed-wing aircraft to conduct aerial surveys of the project area prior to the commencement of operations in order to identify locations of congregations of beluga whales. Apache will conduct daily aerial surveys. Daily surveys to assess the area intended to be surveyed on each day will be scheduled to occur at least 30 minutes and no more than 120 minutes prior to any seismic-related activities (including but not limited to node laying/retrieval or airgun operations). Aerial surveys will occur along and parallel to the shoreline throughout the project area as well as the eastern and western shores of central and northern Cook Inlet on a weekly basis.

Survey aircraft would fly at an altitude of 305 m (1,000 ft). In the event of a marine mammal sighting, aircraft would attempt to maintain a radial distance of 457 m (1,500 ft) from the marine mammal(s). Aircraft would avoid approaching marine mammals from head-on, flying over or passing the shadow of the aircraft over the marine mammal(s). By following these operational requirements, aerial surveys are not expected to harass marine mammals (Richardson *et al.*, 1995; Blackwell *et al.*, 2002).

Based on data collected from Apache during its survey operations conducted under the April 2012 and March 2014 IHAs, NMFS determined that the foregoing monitoring measures will allow Apache to identify animals nearing or entering the Level B disturbance exclusion zone with a reasonably high degree of accuracy.

4. Passive Acoustic Monitoring (PAM)

NMFS will work with Apache to execute a viable attempt at using PAM to acoustically clear the area during low-light conditions, when visually clearing an area is not possible. The exact technologies required for PAM will be determined during review of the LOA applications to ensure effectiveness of the required measure. This will primarily be for ramping up airguns after a power down or shutdown in non-daylight hours. In addition, Apache must conduct PAM throughout all seismic airgun array operations occurring between local sunset and local sunrise when the zone of influence extends to Cook Inlet waters north of 60° 43′N at any time of year, and south of 60° 43′ from October 15 to April 15. NMFS will require Apache to use a fixed, nearshore PAM system, with at least one protected species observer trained in PAM to listen to the hydrophone. The continued use of this system will depend on its effectiveness and practicability and will be addressed through the adaptive management process and in annual LOAs issued under this rulemaking.

Reporting Measures

Apache will immediately contact NMFS if the total number of belugas detected in the Level B disturbance exclusion zone over the course of the survey exceeds 25 to allow NMFS to evaluate and make any necessary adjustments to monitoring and mitigation to ensure continuing compliance. Apache will also report when the take calculation using the methodology described in the Estimating Take section below reaches 25 belugas. If the number of detected takes for any marine mammal species meets or exceeds the number of takes authorized, Apache will immediately cease survey operations involving the use of active sound sources (*e.g.*, airguns and pingers) and notify NMFS. Resumption of seismic operations may only occur if and when NMFS confirms that operations may proceed in compliance with both the MMPA and the ESA.

1. Weekly Reports

Apache will submit a weekly field report to NMFS Headquarters as well as the Alaska Regional Office, no later than close of business each Thursday during the weeks when in-water seismic survey activities take place. The weekly field reports will summarize species detected (number, location, distance from seismic vessel, behavior), in-water activity occurring at the time of the sighting (discharge volume of array at time of sighting, seismic activity at time of sighting, visual plots of sightings, and number of power downs and shutdowns), behavioral reactions to in-water activities, and the number of marine mammals exposed. Additionally, due to the adaptive management component of this rule, Apache must include which km^2 grid cells were surveyed during that week and the resulting number of belugas that may have been taken using the methods outlined in this notice below, which use the Goetz *et al.* (2012) density model as part of the basis for the calculation. Apache must provide the cells, corresponding density, and estimated number of beluga exposures using this methodology for that week, as well as the total from the preceding weeks.

2. Monthly Reports

Monthly reports will be submitted to NMFS for all months during which in-water seismic activities take place. The monthly report will contain and summarize the following information:

- Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings.
- Species, number, location, distance from the vessel, and behavior of any sighted marine mammals, as well as associated seismic activity (number of power-downs and shutdowns), observed throughout all monitoring activities.
- An estimate of the number (by species) of: (i) Pinnipeds that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 190 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited; and (ii) cetaceans that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited.
- A description of the implementation and effectiveness of the: (i) Terms and conditions of the Biological Opinion's Incidental Take Statement (ITS); and (ii) mitigation measures of the LOA. For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness for minimizing the adverse effects of the action on ESA-listed marine mammals.

3. Annual Reports

Apache will submit an annual report to NMFS's Permits and Conservation Division within 90 days after the end of every operating season but no later than 60 days before the expiration of each annual LOA during the five-year period. The annual report will include:

- Summaries of monitoring effort (*e.g.*, total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals).

- Descriptions of various factors influencing detectability of marine mammals (*e.g.*, sea state, number of observers, and fog/glare) and how they may affect detection rates.
- Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.
- Analyses of the effects of survey operations.
- Sighting rates of marine mammals during periods with and without seismic survey activities (and other variables that could affect detectability), such as: (i) Initial sighting distances versus survey activity state; (ii) closest point of approach versus survey activity state; (iii) observed behaviors and types of movements versus survey activity state; (iv) numbers of sightings/individuals seen versus survey activity state; (v) distribution around the source vessels versus survey activity state; (vi) numbers of animals detected in the 160 dB harassment (disturbance exclusion) zone; and (vii) number and type of mitigation measures implemented including shutdowns and powerdowns.

NMFS will review the draft annual reports. Apache must then submit a final annual report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft annual report. If NMFS determines it has no comments, the draft report shall be considered to be the final report.

4. Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), Apache will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, and the Alaska Regional Stranding Coordinators. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Apache to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Apache may not resume their activities until notified by NMFS that it may do so, via letter or email, or telephone.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as described in the next paragraph), Apache will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, and the NMFS Alaska Stranding Hotline. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Apache to determine whether modifications in the activities are appropriate.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Apache will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, her designees, the NMFS Alaska Stranding Hotline, and the Alaska Regional Stranding Coordinators within 24 hours of the discovery. Apache will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Standing Network. Activities may continue while NMFS reviews the circumstances of the incident.

NMFS requires that Apache must suspend seismic operations if a live marine mammal stranding is reported in Cook Inlet coincident to, or within 72 hours of, seismic survey activities involving the use of airguns (regardless of any suspected cause of the stranding). The shutdown must occur if the animal is within a distance two times that of the 160 dB isopleth of the largest airgun array configuration in use. This distance was chosen to create an additional buffer beyond the distance at which animals would typically be considered harassed, as animals involved in a live stranding event are likely compromised, with potentially increased susceptibility to stressors, and the goal is to decrease the likelihood that they are further disturbed or impacted by the seismic survey, regardless of what the original cause of the stranding event was. Shutdown procedures will remain in effect until NMFS determines and advises Apache that all live animals involved in the stranding have left the area (either of their own volition or following herding by responders).

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the seismic survey program with required mitigation and monitoring. Anticipated impacts to marine mammals are associated with noise propagation from the sound sources (*e.g.*, airguns and pingers) used in the seismic survey as supported by the SSV study, not from vessel strikes because of the slow speed of the vessels (2–4 knots), or from aircraft overflights, as surveys will be flown at a minimum altitude of 305 m (1,000 ft) and at 457 m (1,500 ft) when marine mammals are detected.

Apache requested authorization to take six marine mammal species by Level B harassment: Cook Inlet beluga whale; killer whale; harbor porpoise; gray whale; harbor seal; and Steller sea lion. Due to the reported sightings in Cook Inlet as well as public comment, NMFS has also included take of humpback whales, minke whales, and Dall's porpoise in this final rule.

For impulse sounds, such as those produced by airgun(s) used in the seismic survey, NMFS used the 160 dB re 1 µPa (rms) isopleth to indicate the onset of Level B harassment. The current Level A (injury) harassment threshold is 180 dB (rms) for cetaceans and 190 dB (rms) for pinnipeds. The NMFS annual aerial survey data provided in Table 5 of Apache's application was used to derive density estimates for each species other than belugas (number of individuals/km²). Beluga densities were extracted from the predictive habitat model created by Goetz *et al.* (2012). The Goetz model also is constructed from NMML summer months aerial survey data from 1993–2008.

Applicable Zones for Estimating "Take by Harassment"

To estimate takes by Level B harassment for this rule, as well as for mitigation radii to be monitored by PSOs, ranges to the 160 dB (rms) isopleths were estimated at three different water depths (5 m, 25 m, and 45 m) for nearshore surveys and at 80 m for channel surveys. The distances to this threshold for the nearshore survey locations are provided in Table 2 below.

TABLE 2—DISTANCES TO SOUND LEVEL THRESHOLDS FOR THE NEARSHORE SURVEYS

Sound level threshold (dB re 1µPa)	Water depth at source location (m)	Distance in the onshore direction (km)	Distance in the offshore direction (km)	Distance in the parallel to shore direction (km)
160	5	1.03	4.73	2.22
160	25	5.69	7.77	9.5
160	45	6.75	5.95	9.15
180	5	0.46	0.6	0.54
180	25	1.06	1.07	1.42
180	45	0.7	0.83	0.89
190	5	0.28	0.33	0.33
190	25	0.35	0.36	0.44
190	45	0.1	0.1	0.51

To estimate take by Level B harassment, Apache used the largest value from each category. The distances to the thresholds for the channel survey locations are provided in Table 3 below and correspond to the broadside and endfire directions.

TABLE 3—DISTANCES TO SOUND THRESHOLD FOR CHANNEL SURVEYS

Sound level threshold (dB re 1 µPa)	Water depth at source location (m)	Distance in the broadside direction (km)	Distance in the endfire direction (km)
160	80	5.14	7.33
189	80	0.91	0.98
190	80	0.15	0.18

The areas ensonified to the 160 dB isopleth for the nearshore survey are also provided in Table 3 in Apache's application. The estimated daily acoustic footprint (ensonified to the 160 dB threshold) for each survey day is 517 km².

Compared to the airguns, the relevant isopleths for the positioning pinger are quite small. The distances to the 190, 180, and 160 dB (rms) isopleths are 1 m, 3 m, and 25 m (3.3, 10, and 82 ft), respectively. Due to the small isopleths and the existing mitigation for the airgun isopleths, which are much larger, pingers are not considered in the take estimation section.

Estimates of Marine Mammal Density

Based on the available data, Apache used one method to estimate densities for Cook Inlet beluga whales and another method for the other marine mammals in the area expected to be taken by harassment. Both methods are described in this document.

1. Beluga Whale Density Estimates

In consultation with staff from NMFS's National Marine Mammal Laboratory (NMML) during development of the second IHA in early 2013, Apache used a habitat-based model developed by Goetz *et al.* (2012a). Information from that model has once again been used to estimate densities of beluga whales in Cook Inlet and we consider it to be the best available information on beluga density. A summary of the model is provided here, and additional detail can be found in Goetz *et al.* (2012a). Using NMML's beluga aerial survey data, Goetz *et al.* (2012a) developed a model based on sightings, depth soundings, coastal substrate type, environmental sensitivity index, anthropogenic disturbance, and anadromous fish streams to predict beluga densities throughout Cook Inlet. The result of this work is a beluga density map of Cook Inlet, which predicts spatially explicit density estimates for Cook Inlet belugas. This predictive habitat model is based on data about distribution and group size of beluga whales observed between 1994 and 2008 during aerial surveying in summer months. A 2-part "hurdle" model (a hurdle model in which there are two processes, one generating the zeroes and one generating the positive values) was applied to describe the physical and anthropogenic factors that influence (1) beluga presence (mixed model logistic regression) and (2) beluga count data (mixed model Poisson regression). Beluga presence was negatively associated with sources of anthropogenic disturbance and positively associated with fish availability and access to tidal flats and sandy substrates. Beluga group size was positively associated with tidal flats and proxies for seasonally available fish. Using this analysis, Goetz *et al.* (2012) produced habitat maps for beluga presence, group size, and the expected number of belugas in each 1 km^2 cell of Cook Inlet. The habitat-based model developed by Goetz *et al.* (2012) was developed using a Geographic Information System (GIS). A GIS is a computer system capable of capturing, storing, analyzing, and displaying geographically referenced information; that is, data identified according to location. However, the Goetz *et al.* (2012) model does not incorporate seasonality into the density estimates, as the data used to feed the model is from NMML survey data largely collected in June. However, Apache factors in seasonal considerations of beluga density into the design of the survey tracklines and locations based around mitigation measures such as seasonal closure of the Susitna Delta region in addition to other factors such as weather, ice conditions, and seismic needs.

As a result of discussions with NMFS, Apache used the NMML model (Goetz *et al.*, 2012a) in their calculation for the estimate of takes. Apache has established two zones (Zone 1—North of the Forelands, Zone 2—South of the Forelands) and will conduct seismic surveys within all, or part of these zones; to be determined as weather, ice, and priorities dictate. Based on information using Goetz *et al.* (2012a) model, Apache derived one density estimate for beluga whales in Zone 1 (*i.e.,* upper Cook Inlet) and another density estimate for beluga whales in Zone 2 (*i.e.,* lower Cook Inlet). The density estimates calculated by Apache in their application for surveys areas in Upper Cook Inlet and lower Cook Inlet are, respectively, 0.0212 and 0.0056 whales/km^2.

2. Other (Non-Beluga Whale) Species Density Estimates

Densities of other marine mammals in the project area were estimated from the annual aerial surveys conducted by NMFS for Cook Inlet beluga whale between 2000 and 2012 in June (Rugh *et al.,* 2000, 2001, 2002, 2003, 2004b, 2005b, 2006, 2007; Shelden *et al.,* 2008, 2009, 2010, 2012; Hobbs *et al.,* 2011). These surveys were flown in June to collect abundance data of beluga whales, but sightings of other marine mammals were also reported. Although these data were only collected in one month each year, these surveys provide the best available relatively long term data set for sighting information in the project area. The general trend in marine mammal sighting is that beluga whales and harbor seals are the species seen most frequently in upper Cook Inlet, with higher concentrations of harbor seals near haul out sites on Kalgin Island and of beluga whales near river mouths, particularly the Susitna River. The other marine mammals of interest for this rule (killer whales, gray whales, harbor porpoises, Steller sea lions) are observed infrequently in upper Cook Inlet and more commonly in lower Cook Inlet. These densities are calculated based on a relatively large area that was surveyed, much larger than the survey area for a given year of seismic data acquisition.

Table 5 in Apache's application provides a summary of the results of each annual NMFS aerial survey conducted in June from 2000 to 2012. The total number of individuals sighted for each survey by year is reported, as well as total hours for the entire survey and total area surveyed. To estimate density of marine mammals, total number of individuals (other species) observed for the entire survey area by year (surveys usually last several days) was divided by the approximate total area surveyed for each year (density = individuals/km^2). As noted previously, the total number of animals observed for the entire survey includes both lower and upper Cook Inlet, so the total number of each species reported and used to calculate density is higher than the number of marine mammals anticipated to be observed in the project area.

Harbor Seals

In particular, the total number of harbor seals observed on several surveys is very high due to several large haul outs in lower and middle Cook Inlet. The focus of these NMML aerial surveys is on coastal environments, where beluga occurrence is high, which likely inflates the densities derived for harbor seals, as they also exhibit coastal habitat preference. Additionally, large haulouts for harbor seals are included in the NMML survey tracklines. These inclusions make it difficult to extrapolate the density derived as a uniform distribution across the entire portion of Apache's survey, 100 days of which are in deep water and removed from the harbor seal's preferred coastal habitat.

The table below (Table 4) provides average density estimates for gray whales, harbor seals, harbor porpoises, killer whales, and Steller sea lions over the 2000–2012 period.

TABLE 4—ANIMAL DENSITIES IN COOK INLET

Species	Average density (animals/km^2)
Humpback whale	0.0024
Gray whale	5.33E–05
Harbor seal	0.25
Minke whale	1.14E–05
Dall's porpoise	0.0002
Harbor porpoise	0.0039
Killer whale	0.00075
Steller sea lion	0.0083

Calculation of Takes by Harassment

1. Beluga Whales

Apache will limit surveying in the seismic survey area to ensure takes do no exceed a maximum of 30 beluga takes during each open water season. The following equation allows Apache to ensure that the beluga takes do not exceed 30 when contemplating the amount of seismic effort that will be conducted in different areas with different densities across days:

$$\text{Equation 1: } d_1A_1 + d_2A_{2\ldots} + d_xA_x \leq 30 \text{ Beluga Takes}$$

$$* \; d_x = \frac{\text{Expected Beluga Takes from the NMML model in area covered in a given day}}{\text{Total Area surveyed on that given day including 160 dB buffer}}$$

$$* \; A_x = \text{Actual Area Surveyed (km}^2\text{) including 160 dB buffer in Zone X}$$

This formula also allows Apache flexibility to prioritize survey locations in response to local weather, ice, and operational constraints. Apache may choose to survey portions of a zone or a zone in its entirety, and the analysis in this rule takes this into account. For the 2016 season, Apache will survey the same area that was authorized in 2014. Using the above formula, if Apache surveys the entire area of Zone 1 (1,319 km^2) as delineated in their 2014 IHA, then essentially none of Zone 2 will be surveyed because the input in the calculation denoted by d_2A_2 would essentially need to be zero to ensure that the total assessed take of beluga whales is not exceeded. The use of this formula, combined with required weekly reporting to NMFS, will ensure that Apache's seismic program, including the 160 dB buffer, will not exceed 30 calculated beluga takes annually.

TABLE 5—EXPECTED BELUGA WHALE TAKES, TOTAL AREA OF ZONE, AND AVERAGE BELUGA WHALE DENSITY ESTIMATES

	Expected beluga takes from NMML model (including the 160 dB buffer)	Total area of zone (km2) (including the 160 dB buffer)	Average take density (dx)
Zone 1	28	1319	d1 = 0.0212
Zone 2	29	5160	d2 = 0.0056

Apache will initially limit actual survey areas, including 160-dB buffer zones, to satisfy the formula denoted here. Operations are required to cease for the year once Apache has conducted seismic data acquisition in an area where multiplying the applicable density by the total ensonified area out to the 160-dB isopleth equals 30 beluga whales, using the equation provided above. Apache's annual seismic operational area would be determined as weather, ice, and priorities dictate. Apache has requested a maximum allowed take for Cook Inlet beluga whales of 30 individuals. During each annual LOA, Apache would operate in a portion of the total seismic operation area of 5,684 km^2 (2,195 mi^2), such that when one multiplies the modeled beluga whale density for each daily operational area times the area to be ensonified to the 160-dB isopleth of 9.5 km (5.9 mi), the sum of the estimated takes will not exceed 30 beluga whales in a given year.

2. Other Marine Mammal Species

The estimated number of other Cook Inlet marine mammals that may be harassed during the seismic surveys was calculated by multiplying the average density estimates (presented in Table 2 in this document) by the area ensonified per day by levels ≥160 dB re μPa rms by the number of days of surveying (see Appendix C and Appendix D in Apache's application for more information).

Apache anticipates that a crew will collect seismic data for 8–12 hours per day over approximately 160 days over the course of 8 to 9 months each year. It is assumed that over the course of these 160 days, 100 days would be working in the offshore region and 60 days in the shallow, intermediate, and deep nearshore region. Of those 60 days in the nearshore region, 20 days would be in each depth. It is important to note that environmental conditions (such as ice, wind, fog) will play a significant role in the actual operating days.

NMFS calculated the number of potential exposure instances for each non-beluga species using the density information derived from NMFS aerial surveys conducted from 2000–2012. These animal densities were multiplied by the number of days in each water depth (shallow, intermediate, deep, or offshore) as well as the estimated ensonified area per day for each water depth. This method is likely an overestimation of the number of individuals taken as it represents the likely number of instances of take, without accounting for repeated take of individuals, which is especially likely to occur with resident species such as harbor seals as detailed below.

Table 6 below outlines the calculation of annual exposures for non-beluga species.

TABLE 6—ANNUAL INSTANCES OF EXPOSURE CALCULATED FOR NON-BELUGA SPECIES

	Annual exposures
Gray Whale	8.13
Harbor seal	24279.35
Harbor porpoise	283.26
Killer whale	70.33
Steller sea lion	701.98
Humpback whale	203.66
Minke whale	0.98
Dall's porpoise	17.30

NMFS has further refined the annual estimates of Level B take. In consultation with the Alaska Regional Office and their access to sightings data for listed species, NMFS was able to derive estimates of the number of individuals likely to be taken by these activities for certain species. The NMFS aerial surveys from which density is derived include large portions of the lower Inlet that are not part of Apache's action area and coincide with some of the highest densities of Steller sea lions in Cook Inlet. Particularly in the Upper Inlet, Steller sea lions are sighted as singles or in pairs. Additionally, Apache's activity will not occur near any haulouts where Steller sea lions have been reported in large numbers. Due to their infrequency of occurrence in the northern parts of Cook Inlet, NMFS will authorize annual take of Steller sea lions equal to the maximum number of animals sighted in a single occurrence, 20 individuals.

Humpback whales are also sighted infrequently in Cook Inlet, with several sighted each summer, largely in the lower Inlet. Due to the well documented and seasonal nature of their occurrence in Cook Inlet, NMFS determined it appropriate to authorize an annual take of two humpback whales, which is expected to be the maximum number encountered in the action area during a season.

As noted above, using the (daily ensonified area × number of survey days × density) method results in a reasonable estimate of the instances of take, but likely significantly overestimates the number of individual animals expected to be taken. With most species, even this overestimated number is still very small, and additional analysis is not really necessary to ensure minor impacts. However, because of the number and density of harbor seals in the area, a more accurate understanding of the number of individuals likely taken is necessary to fully analyze the impacts and ensure that the total number of harbor seals taken is small.

As described below, we believe that the modeled number of estimated instances of take may actually be high, based on monitoring results from the area. The density estimate from NMFS aerial surveys includes harbor seal haulouts far south of the action area that may never move to an ensonified area. Further, we believe that we can reasonably estimate the comparative number of individual harbor seals that will likely be taken, based both on monitoring data, operational information, and on a general understanding of harbor seal habitat use within Cook Inlet.

Using the (daily ensonified area × number of survey days × density) formula, the number of instances of exposure above the 160 dB threshold estimated for Apache's activity in Cook Inlet is 24,279. However, based on monitoring data from previous activities, it is clear this number is an overestimate—compared to both aerial and vessel based observation efforts. Apache's monitoring report from 2014 details that they saw 652 harbor seals from 76 aerial flights in the vicinity of the survey primarily during the months of May and June, which are the peak months for harbor seal haulout. In surveying the literature, correction factors to account for harbor seals in water based on land counts from aerial surveys vary from 1.2 to 1.65 (Harvey & Goley, 2011). Using the most conservative factor of 1.65 (allowing us to consider that some of the individuals on land may have entered the water at other points in day), if Apache saw 652 seals hauled out then there were an estimated 1076 seals in the water during those 76 days. If, because there were only 76 survey days, we conservatively multiply by 2.1 to estimate the number of seals that might have been seen if the aerial surveys were conducted for 160 days, this yields an estimate of 2,260 instances of seal exposure in the water, which is far less than the estimated 24,279. That the number of potential instances of exposure is likely less than 24,279 is also supported by the visual observations from PSOs on board other seismic vessels. PSOs for SAE's 2015 work sighted 1,680 seals in water over 135 days of activity which is a similar operational period to Apache's annual requested window of operation. Given the size of the disturbance zone for these activities, it is likely that not all harbor seals that were exposed were seen by PSOs, however 1,680 is still far less than the estimate of 24,279 given by the density calculations.

Further, based on the residential nature of harbor seals and the number of patches Apache plans to shoot, it is possible to reasonably estimate the number of individual harbor seals exposed, given the instances of exposures. Based on provided estimates, Apache will shoot one patch in 5 days. If seals are generally returning to haulouts in the survey area over the 5 days of any given patch shoot, than any given seal in the area could be exposed a minimum of one day and a maximum of all five days, with an average of 3 days. If the original exposure estimate using density is 22,279 exposures, then when divided by three (the average number of times an animal could be exposed during the shooting of one patch), the expected number of individuals exposed is 7,426, which is approximately 32% of the population. This number is also likely an overestimate given that adjoining patches may be shot, meaning the same seals could be exposed over multiple patches. Given these multiple methods, as well as the behavioral preferences of harbor seals for haulouts in certain parts of the Inlet (Montgomery *et al.*, 2007), and high concentrations at haulouts in the lower Inlet (Boveng *et al.*), it is unreasonable to expect that more than 25% of the population, or 5,725 individuals, will be taken by Level B harassment during Apache's activity in any given year.

Summary of Level B Harassment Takes

Table 5 outlines the density estimates used in abundance and Level B harassment take calculations, the abundance of each species in Cook Inlet, the percentage of each species or stock estimated to be taken if each take were equivalent to an individual, and current population trends. Note that for harbor seals, however, that the authorized number of takes specifically does not represent the number of individuals, but rather the number of instances of take. The number of individual harbor seals taken is anticipated to be significantly smaller as described below in the Negligible Impact section. While the estimated number of individuals cannot be calculated as easily, it is semi-quantitatively assessed and that assessment has been used to estimate the percentage of the population that will be taken.

TABLE 7—DENSITY ESTIMATES, ANNUAL INSTANCES OF LEVEL B HARASSMENT TAKE AUTHORIZED, SPECIES OR STOCK ABUNDANCE, PERCENTAGE OF POPULATION TO BE TAKEN, AND SPECIES TREND STATUS

Species	Average density (# individuals/km^2)	Authorized Level B take	Abundance	Percentage of population	Trend
Beluga Whale	Upper = 0.0212 Lower = 0.0056	30	340	8.8	Stable.
Harbor Seal	0.282	24,279	22,900	(*)	Stable.
Harbor Porpoise	0.00339	283	31,046	0.91	No reliable information.
Killer Whale	0.00081	70	1,123 (resident)	6.26	Resident stock possibly increasing.
			345 (transient)	12.74	Transient stock stable.
Steller Sea Lion	0.0082	20	79,300	0.025	Decreasing but with regional variability (some stable or increasing).
Gray Whale	9.46E–05	8	19,126	0.043	Stable/increasing.
Humpback Whale	0.00237	2	7,469	0.027	Southeast Alaska increasing.
Minke whale	0.98	1	1233	0.080	No reliable information.
Dall's porpoise	17.30	17	106,000	0.016	No reliable information.

* For harbor seals, the authorized instances of take represented here are expected to be significant overestimates of the number of individuals taken. Additional analysis has been conducted to refine the estimated percentage of the population that is likely to be taken.

The following Table 8 applies the authorized Level B harassment take levels from Table 7 and expands them to a 5 year timeline, spanning the entire duration of the rule.

TABLE 8—AUTHORIZED LEVEL B HARASSMENT TAKE LEVELS FOR 5 YEAR PERIOD

Species	Annual Level B take	Project total (5 year) Level B take
Beluga Whale	30	150
Harbor Seal	*5,725	28,625
Harbor Porpoise	283	1,415
Killer Whale	70	350
Steller Sea Lion	20	100
Gray Whale	8	40
Humpback Whale	2	10
Minke whale	1	5
Dall's porpoise	17	85

*This number represents the number of harbor seal individuals authorized to be taken, rather than instances of exposure.

Analysis and Determinations

Negligible Impact Analysis

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, feeding, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

1. General Discussion (All Species)

Given the required mitigation and related monitoring, no injuries or mortalities are anticipated to occur as a result of Apache's seismic survey in Cook Inlet, and none are authorized. Animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. The takes that are anticipated are expected to be limited to relatively short-term Level B behavioral harassment. The seismic airguns do not operate continuously over a 24-hour period. Rather airguns are operational for a few hours at a time totaling about 12 hours a day.

Taking into account the mitigation measures that are planned, effects on marine mammals are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases or moves away. Only a relatively small portion of marine mammal habitat will be affected at any time, and other adjacent areas of Cook Inlet of equivalent value will be available for necessary biological functions.

The addition of nine vessels, and noise due to vessel operations associated with the seismic survey, would not be outside the present experience of marine mammals in Cook Inlet, although levels may increase locally to the seismic survey. Given the large number of vessels in Cook Inlet and the observed apparent habituation to vessels by some individual Cook Inlet beluga whales and other marine mammals that may occur in the area (NMFS, 2008a), as well as the fact that the increased noise from the seismic survey will not be focused in one concentrated area in which individual animals are known to concentrate for longer times, vessel activity and noise is not expected to have effects that could cause significant or long-term consequences for individual marine mammals or their populations (Lerczak *et al.,* 2000).

Mitigation measures such as controlled vessel speed, dedicated marine mammal observers, non-pursuit, and shutdowns or power downs when marine mammals are seen within defined ranges designed both to avoid injury and disturbance will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects of the seismic survey are expected to be short-term, with no lasting biological consequence.

Potential impacts to marine mammal habitat were discussed previously in this document (see the "Anticipated Effects on Habitat" section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect an individual's ability to forage. Based on the size of Cook Inlet where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere.

2. Mysticetes

Of the three mysticete species for which take is authorized, one species (humpback whale) is listed under the ESA. The Central North Pacific stock of humpback whales winters in Hawaii but travels to the Gulf of Alaska for summer feeding. There is no critical habitat designated for humpback whales in Cook Inlet. Gray whales and minke whales are also seen in Cook Inlet infrequently, with no known biologically important areas of these species in Cook Inlet. While low frequency specialists (*e.g.,* mysticetes) may be more sensitive to the low frequency sounds of seismic airguns, and the sounds may me more likely to temporarily mask their calls than the calls of odontocetes, due to the very limited anticipated spatial and temporal overlap of any individual mysticetes with this activity, only relatively short-term and lower-level behavioral impacts are anticipated. The exposure of mysticetes to sounds produced by Apache's seismic survey operation is not anticipated to have an effect on annual rates of recruitment or survival of the affected species or stocks.

3. Odontocetes

Odontocete (including Cook Inlet beluga whales, killer whales, Dall's porpoise, and harbor porpoises) reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, in part because odontocete hearing is assumed to be less sensitive to lower frequency sources than that of mysticetes. Harbor porpoises are seen with regularity in Cook Inlet but the relevant stock is a stable population, of which Cook Inlet is only a portion of its total Gulf of Alaska range. Killer whales and Dall's porpoise are sighted infrequently in upper Cook Inlet and there are no known areas of biological importance to these species in upper Cook Inlet. The exposure of odontocetes to sounds produced by Apache's seismic survey operation is not anticipated to have an effect on annual rates of recruitment or survival of the affected species or stocks.

3a. Belugas

Endangered Cook Inlet beluga whales are resident species in Cook Inlet with two areas of critical habitat designated under the ESA: Critical Habitat Area 1 in the Upper Inlet, and Critical Habitat Area 2 farther south in the Inlet. The estimated annual rate of decline for Cook Inlet beluga whales was 0.6 percent between 2002 and 2012. Despite a moratorium on the subsistence hunting of belugas, the population has been slow to increase, with the most recent abundance estimate calculating a population of 340 individuals (Shelden *et al.*, 2015). The causes contributing to the lack of recovery are still largely unknown. With this in mind, NMFS has included several measures, described below, to further minimize impacts on beluga whales.

Due to the dispersed distribution of beluga whales in Cook Inlet during winter and the concentration of beluga whales in upper Cook Inlet from late April through early fall, belugas will likely occur in the majority of Apache's survey area during the majority of Apache's annual operational timeframe of March through December. Due to extensive mitigation measures including a shutdown requirement if belugas are sighted within the Level B harassment zone, it is likely that only few animals would be exposed to received sound levels associated with behavioral disturbance, and highly unlikely that any would be exposed to received sound levels equal to or greater than those that may cause injury.

Additionally, NMFS will seasonally restrict seismic survey operations in the Susitna Delta region of upper Cook Inlet, a location known to be important for beluga whale feeding, calving, and nursing. NMFS will implement a 16 km (10 mi) seasonal exclusion from seismic survey operations in this region from April 15–October 15. NMFS is implementing this exclusion zone from the mean lower low water line (MLLW), which excludes a large portion of the Inlet north of the Forelands from seismic surveying activity during periods of high use and biological importance to belugas. The highest concentrations of belugas are typically found in this area from early May through September each year. NMFS has incorporated a 2-week buffer on each end of this seasonal use timeframe to account for any anomalies in distribution and marine mammal usage. To further minimize impacts, Apache will be required to power down or shutdown when any beluga is seen approaching or within the 160dB behavioral disturbance zone. This mitigation measure is expected to further lower the number of belugas taken, but more importantly, to reduce the anticipated consequences of any behavioral disturbance by ensuring that it does not occur at this important area in a time when animals need to specifically focus on, and expend energy towards, feeding, calving, or nursing.

There is little available literature regarding behavioral response of Cook Inlet belugas to seismic surveys. When in the Canadian Beaufort Sea in summer, belugas appear responsive to seismic energy, with few being sighted within 10–20 km (6–12 mi) of seismic vessels during aerial surveys (Miller *et al.*, 2005). However, it has been documented that beluga responses to anthropogenic noise vary depending upon location and so the results from the Beaufort Sea surveys may or may not be directly relevant to potential reactions of Cook Inlet beluga whales (Wartzok *et al.*, 2003; Huntington, 2002).

4. Pinnipeds

Steller sea lion trends for the western stock are variable throughout the region with some decreasing and others remaining stable or even indicating slight increases. While Steller sea lions are sighted regularly in Cook Inlet, these sightings occur much farther south than Apache's proposed action area. They are rarely sighted north of the Forelands, and when they are sighted it is largely as pairs or individuals.

Some individual pinnipeds may be exposed to sound from the seismic surveys more than once during the timeframe of the project. Taking into account the mitigation measures that are planned, effects on pinnipeds are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment". Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases or moves to another location. Only a small portion of pinniped habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. In addition, the area where the survey will take place is not known to be an important location where pinnipeds haul out. The closest known haul-out site is located on Kalgin Island, which is about 22 km from the McArther River. More recently, some large congregations of harbor seals have been observed hauling out in upper Cook Inlet. However, it is still rare to encounter large numbers of harbor seals during in-water activity. Additionally, most known large harbor seal haulouts are in the southern portion of Cook Inlet, well south of the area Apache plans to survey. Therefore, the exposure of pinnipeds to sounds produced by this phase of Apache's seismic survey is not anticipated to have an effect on annual rates of recruitment or survival on those species or stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total per-species or per-stock annual marine mammal take from Apache's seismic survey over the course of the 5-year period of this rule will have a negligible impact on the affected marine mammal species or stocks. NMFS has made the necessary findings to issue the 5-year regulations for Apache's activities but believes a cautious approach is appropriate in the management of impacts on this small resident beluga population with declining abundance and constricted range. Accordingly, NMFS will issue annual Letters of Authorization (LOAs), as appropriate, instead of a single 5-year LOA. Apache will be required to submit a draft monitoring report from their season of work by October 31st of each year so that NMFS can review the report and provide any comments so that Apache can submit a final report by November 30th. This will allow the agency to take into account annually Apache monitoring reports and any other new information on anticipated impacts or Cook Inlet belugas, to inform our evaluation of subsequent LOA applications and ensure that we are able to confirm the necessary findings. LOA applications must be submitted by

December 31st preceding the requested start date of operations. Additionally, the regulations contain an adaptive management provision that allows for the modification of mitigation or monitoring requirements at any time (in response to new information) to ensure the least practicable adverse impact on the affected species and maximize the effectiveness of the monitoring program. Consistent with our implementing regulations, if NMFS determines that the level of taking is having or may have a more than negligible impact on a species or stock, NMFS may suspend or modify an LOA, as appropriate, following notice and comment.

Small Numbers Analysis

The requested and authorized takes represent 9.6 percent of the Cook Inlet beluga whale population of approximately 312 animals (Allen and Angliss, 2014), 6.26 percent of the Alaska resident stock and 12.74 percent of the Gulf of Alaska, Aleutian Island and Bering Sea stock of 345 transient killer whales, 0.91 percent of the Gulf of Alaska stock of approximately 31,046 harbor porpoises, 0.27 percent of the Central North Pacific stock of approximately 7,469 humpback whales, 0.016 percent of the Alaska stock of 106,000 Dall's porpoise, 0.08 percent of the Alaska stock of 1,233 minke whales, and 0.042 percent of the eastern North Pacific stock of approximately 19,126 gray whales. The requested takes for Steller sea lions represent 0.025 percent of the western stock of approximately 79,300 animals.

The take estimates for beluga whales, humpback whales, and Steller sea lions represent the number of individuals of each species or stock that could be taken by Level B behavioral harassment. For the remaining species (killer whales, harbor porpoise, Dall's porpoise, minke whales, and gray whales), the Level B take estimates represent the instances of exposure that may occur as a result of Apache's activity, meaning that the number of unique individuals taken will likely be lower.

The take request presented for harbor seals would represent 106 percent of the Cook Inlet/Shelikof stock of approximately 22,900 animals if each instance of exposure represented a unique individual, however, that is not the case. The mathematical calculation that resulted in 22,900 does not account for other factors that, when considered appropriately, suggest that far fewer individuals will be taken. The species' coastal nature, affinity for haulout sites in the southern Inlet, and absence during previous seismic surveys suggests that the number of individuals seals exposed to noise at or above the Level B harassment threshold, which likely represent repeated exposures of the same individual, is at a low enough level for NMFS to consider small.

When calculating take using the method used by NMFS in previous Apache IHAs to estimate the number of individuals taken (total area multiplied by density) the number of harbor seals taken is 1,769. This previous method calculated take by multiplying density times the total ensonified area (over the whole survey) and represents a good way to gauge the minimum number of individuals exposed, but tends to underestimate take over the course of a survey that extends multiple days and repeated exposures of the same areas across multiple days. This method is useful to more closely gauge the actual number of individuals in situations with resident populations or where the same individuals are expected to remain around the action area for extended periods of time. The true number of individual seals likely to be taken in this situation may be greater than 1,769 but is expected to be considerably lower than the 24,279 instances of take analyzed for authorization here (as described previously). Moreover, the Cook Inlet/Shelikof stock of harbor seals extends well south and west of Cook Inlet, with Apache's activity overlapping only a small portion of the stock's habitat. Harbor seals are known to haul out in large numbers in Kachemak Bay and at the mouth of several rivers, including Fox River, with both of these locations well south of Apache's survey area.

Previous monitoring reports also help to provide context for the number of individual harbor seals likely to be taken. In 2012, SAExploration Inc. observers detected fewer than 300 seals during 116 days of operations, with 100 seals the most seen at once, at a river mouth, hauled out, not in the water or exposed to seismic activity. In 2014, Apache observers saw an estimated 613 individuals in 82 days of operation, mostly during non-seismic periods. Most harbor seals were recorded from the land station, not source vessels. Of the 492 groups of harbor seals seen, 441 were seen during non-seismic operations. The number of harbor seals observed and reported within the take zone in previous surveys suggests that the predicted instances of take of harbor seals for Apache's surveys may be overestimates. Further, the known distribution of this harbor seal stock, including the known preference for haulouts at river mouths as well as the southern portion of Cook Inlet, suggest that the number of exposures calculated through the daily ensonified method is a notable overestimate of the number of individual seals likely to be taken. We have estimated for authorization the calculated number of instances of take, however, when these factors regarding the spatiotemporal distribution of this harbor seal stock throughout its range are considered, we believe that it is a reasonable prediction that not more than 25% of the individuals in the population will be taken.

NMFS finds that the numbers of animals estimated for take authorization here are small on a per-species or per-stock basis when considered relative to the relevant stock abundances. In addition to the quantitative methods used to estimate take, NMFS also considered qualitative factors that further support the "small numbers" determination, including: (1) The seasonal distribution and habitat use patterns of Cook Inlet beluga whales, which suggest that for much of the time only a small portion of the population would be accessible to impacts from Apache's activity, as most animals are found in the Susitna Delta region of Upper Cook Inlet from early May through September, during which seismic activity in the Susitna Delta area is restricted; (2) other cetacean species and Steller sea lions are not common in the seismic survey area. Therefore, NMFS determined that the numbers of animals likely to be taken is small.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Relevant Subsistence Uses

The subsistence harvest of marine mammals is an integral part of the cultural identity of the region's Alaska Native communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA, 2007).

The Cook Inlet beluga whale has traditionally been hunted by Alaska Natives for subsistence purposes. For several decades prior to the 1980s, the Native Village of Tyonek residents were the primary subsistence hunters of Cook Inlet beluga whales. During the 1980s and 1990s, Alaska Natives from villages in the western, northwestern, and North Slope regions of Alaska either moved to or visited the south central region and participated in the yearly subsistence harvest (Stanek, 1994). From 1994 to 1998, NMFS estimated 65 whales per year (range 21–123) were taken in this harvest, including those successfully taken for food and those struck and lost.

NMFS has concluded that this number is high enough to account for the estimated 14 percent annual decline in the population during this time (Hobbs *et al.*, 2008). Actual mortality may have been higher, given the difficulty of estimating the number of whales struck and lost during the hunts. In 1999, a moratorium was enacted (Pub. L. 106–31) prohibiting the subsistence take of Cook Inlet beluga whales except through a cooperative agreement between NMFS and the affected Alaska Native organizations. Since the Cook Inlet beluga whale harvest was regulated in 1999 requiring cooperative agreements, five beluga whales have been struck and harvested. Those beluga whales were harvested in 2001 (one animal), 2002 (one animal), 2003 (one animal), and 2005 (two animals). The Native Village of Tyonek agreed not to hunt or request a hunt in 2007, when no co-management agreement was to be signed (NMFS, 2008a).

On October 15, 2008, NMFS published a final rule that established long-term harvest limits on the Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes (73 FR 60976). That rule prohibits harvest for a 5-year period (2008–2012), if the average abundance for the Cook Inlet beluga whales from the prior five years (2003–2007) is below 350 whales. The next 5-year period that could allow for a harvest (2013–2017), would require the previous five-year average (2008–2012) to be above 350 whales. The 2008 Cook Inlet Beluga Whale Subsistence Harvest Final Supplemental Environmental Impact Statement (NMFS, 2008a) authorizes how many beluga whales can be taken during a 5-year interval based on the 5-year population estimates and 10-year measure of the population growth rate. Based on the 2008–2012 5-year abundance estimates, no hunt occurred between 2008 and 2012 (NMFS, 2008a). The Cook Inlet Marine Mammal Council, which managed the Alaska Native Subsistence fishery with NMFS, was disbanded by a unanimous vote of the Tribes' representatives on June 20, 2012. No harvest occurred in 2015 or is likely in 2016. Residents of the Native Village of Tyonek are the primary subsistence users in the Knik Arm area.

Data on the harvest of other marine mammals in Cook Inlet are lacking. There is a low level of subsistence hunting for harbor seals in Cook Inlet. Seal hunting occurs opportunistically among Alaska Natives who may be fishing or travelling in the upper Inlet near the mouths of the Susitna River, Beluga River, and Little Susitna River. Some data are available on the subsistence harvest of harbor seals, harbor porpoises, and killer whales in Alaska in the marine mammal stock assessments. However, these numbers are for the Gulf of Alaska including Cook Inlet, and they are not indicative of the harvest in Cook Inlet. Some detailed information on the subsistence harvest of harbor seals is available from past studies conducted by the Alaska Department of Fish & Game (Wolfe *et al.*, 2009). In 2008, 33 harbor seals were taken for harvest in the Upper Kenai-Cook Inlet area. In the same study, reports from hunters stated that harbor seal populations in the area were increasing (28.6%) or remaining stable (71.4%). The specific hunting regions identified were Anchorage, Homer, Kenai, and Tyonek, and hunting generally peaks in March, September, and November (Wolfe *et al.*, 2009).

Potential Impacts on Availability for Subsistence Uses

Section 101(a)(5)(A) also requires NMFS to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The primary concern is the disturbance of marine mammals through the introduction of anthropogenic sound into the marine environment during the seismic survey. Marine mammals could be behaviorally harassed and either become more difficult to hunt or temporarily abandon traditional hunting grounds. However, the seismic survey will not have any impacts to beluga harvests as none currently occur in Cook Inlet. Additionally, subsistence harvests of other marine mammal species are limited in Cook Inlet.

Plan of Cooperation or Measures To Minimize Impacts to Subsistence Hunts

Regulations at 50 CFR 216.104(a)(12) require LOA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. NMFS regulations define Arctic waters as waters above 60° N. latitude. Much of Cook Inlet is north of 60° latitude.

Since November 2010, Apache has met and continues to meet with many of the villages and traditional councils throughout the Cook Inlet region. During these meetings, no concerns have been raised regarding potential conflict with subsistence harvest. Past meetings have been held with Alexander Creek, Knikatnu, Native Village of Tyonek, Salamatof, Tyonek Native Corporation, Ninilchik Traditional Council, Ninilchik Native Association, Village of Eklutna, Kenaitze Indian Tribe, and Cook Inlet Region, Inc.

Additionally, Apache met with the Cook Inlet Marine Mammal Council (CIMMC) to describe the project activities and discuss subsistence concerns. The meeting provided information on the time, location, and features of the program, opportunities for involvement by local people, potential impacts to marine mammals, and mitigation measures to avoid impacts. Discussions regarding marine seismic operations continued with the CIMMC until its disbandment.

In 2014, Apache held meetings or discussions regarding project activities associated with this rule with the following entities: Native Village of Tyonek, Tyonek Native Corporation, Cook Inlet Region, Inc., Ninilchik Native Association, Ninilchik Tribal Council, Salamatof Native Association, Cook Inlet Keeper, Alaska Salmon Alliance, Upper Cook Inlet Drift Association, and the Kenai Peninsula Fisherman's Association. Further, Apache has placed posters in local businesses, offices, and stores in nearby communities and published newspaper ads in the Peninsula Clarion.

Apache has identified the following features that are intended to reduce impacts to subsistence users:

- In-water seismic activities will follow mitigation procedures to minimize effects on the behavior of marine mammals and, therefore, opportunities for harvest by Alaska Native communities; and
- Regional subsistence representatives may support or join PSO efforts recording marine mammal observations along with marine mammal biologists during the monitoring programs and will be provided with annual reports.

Apache and NMFS recognize the importance of ensuring that ANOs and federally recognized tribes are informed, engaged, and involved during the permitting process and will continue to work with the ANOs and tribes to discuss operations and activities. On February 6, 2012, in response to requests for government-to-government consultations by the CIMMC and Native Village of Eklutna, NMFS met with representatives of these two groups and a representative from the Ninilchik. We engaged in a discussion about the proposed IHA for phase 1 of Apache's seismic program, the MMPA process for issuing an IHA, concerns regarding Cook Inlet beluga whales, and how to achieve greater coordination with NMFS on issues that impact tribal concerns. NMFS contacted the local Native Villages in August 2014 to inform them of our receipt of an application from Apache to promulgate regulations and issue subsequent annual LOAs.

Unmitigable Adverse Impact Analysis and Determination

The project will not have any effect on beluga whale harvests because no beluga harvest will take place in 2016, nor is one likely to occur in the other years that would be covered by the 5-year regulations and associated LOAs. Additionally, the seismic survey area is not an important site for the subsistence harvest of other species of marine mammals. Also, because of the relatively small proportion of marine mammals utilizing upper Cook Inlet, the number harvested is expected to be extremely low. Therefore, because the program would result in only temporary disturbances, the seismic program would not impact the availability of these other marine mammal species for subsistence uses.

The timing and location of subsistence harvest of Cook Inlet harbor seals may coincide with Apache's project, but because this subsistence hunt is conducted opportunistically and at such a low level (NMFS, 2013c), Apache's program is not expected to have an impact on the subsistence use of harbor seals.

NMFS anticipates that any effects from Apache's seismic survey on marine mammals, especially harbor seals and Cook Inlet beluga whales, which are or have been taken for subsistence uses, would be short-term, site specific, and limited to inconsequential changes in behavior and mild stress responses. NMFS does not anticipate that the authorized taking of affected species or stocks will reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (1) Causing the marine mammals to abandon or avoid hunting areas; (2) directly displacing subsistence users; or (3) placing physical barriers between the marine mammals and the subsistence hunters; and that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Apache's activities. Additionally, the adaptive management component of this rulemaking allows NMFS to adjust mitigation and monitoring requirements as appropriate to minimize severity and level of take of marine mammals due to Apache's activity.

Endangered Species Act (ESA)

There are three marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the project area: The Cook Inlet beluga whale, the western DPS of Steller sea lion, and the Central North Pacific humpback whale. In addition, the action will occur within designated critical habitat for the Cook Inlet beluga whale. NMFS's Permits and Conservation Division consulted with NMFS' Alaska Region Protected Resources Division under section 7 of the ESA. This consultation concluded on February 3, 2016, when a Biological Opinion was issued. The Biological Opinion determined that the issuance of an IHA is not likely to jeopardize the continued existence of the Cook Inlet beluga whales, Central North Pacific humpback whales, or western distinct population segment of Steller sea lions or destroy or adversely modify Cook Inlet beluga whale critical habitat. Finally, the Alaska region issued an ITS for Cook Inlet beluga whales, humpback whales, and Steller sea lions. The ITS contains reasonable and prudent measures implemented by the terms and conditions to minimize the effects of take.

National Environmental Policy Act (NEPA)

NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of five-year regulations to Apache to take marine mammals incidental to conducting a 3D seismic survey program in Cook Inlet, Alaska. NMFS has finalized the EA and prepared a FONSI for this action. Therefore, preparation of an Environmental Impact Statement is not necessary.

Classification

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Apache Alaska Corporation is the only entity that would be subject to the requirements in these regulations. Apache Alaska Corporation is a part of Apache Corporation, which has operations and locations in the United State, Canada, Australia, Egypt, and the United Kingdom (North Sea), employs thousands of people worldwide, and has a market value in the billions of dollars. Therefore, Apache is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS and the OMB Desk Officer (see **ADDRESSES**).

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Subpart N is added to part 217 to read as follows:

Subpart N—Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska

Sec.

217.130 Specified activity and specified geographical region.
217.131 Effective dates.
217.132 Permissible methods of taking.
217.133 Prohibitions.
217.134 Mitigation requirements.
217.135 Requirements for monitoring and reporting.
217.136 Letters of Authorization.
217.137 Renewals and modifications of Letters of Authorization and Adaptive Management.

Subpart N—Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska

§ 217.130 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Apache Alaska Corporation (Apache), and those persons it authorizes to conduct activities on its behalf, for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section incidental to Apache's oil and gas exploration seismic survey program operations.

(b) The taking of marine mammals by Apache may be authorized in a Letter of Authorization (LOA) only if it occurs in Cook Inlet, Alaska.

§ 217.131 Effective dates.

Regulations in this subpart are effective from August 19, 2016 through July 20, 2021.

§ 217.132 Permissible methods of taking.

(a) Under LOAs issued pursuant to § 216.106 of this chapter and § 217.136, the Holder of the LOA (hereinafter "Apache") may incidentally, but not intentionally, take marine mammals within the area described in § 217.130(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 217.130(a) is limited to the indicated number of takes of individuals of the following species and is limited to Level B harassment:

(1) Cetaceans:

(i) Beluga whale (*Delphinapterus leucas*)—150 over the five-year period, with no more than 30 in any year;

(ii) Harbor porpoise (*Phocoena phocoena*)—1,455 over the five-year period, with an average of 283 annually;

(iii) Killer whale (*Orcinus orca*)—350 over the five-year period, with an average of 70 annually;

(iv) Gray whale (*Eschrichtius robustus*)—40 over the five-year period, with an average of 8 annually;

(v) Humpback whale (*Megaptera noveangliae*)—10 over the five-year period, with an average of 2 annually;

(vi) Minke whale (*Balaenoptera acutorostra*)—5 over the five-year period, with an average of 1 annually;

(vii) Dall's porpoise (*Phocoenoides dalli*)—85 over the five-year period, with an average of 17 annually;

(2) Pinnipeds:

(i) Harbor seal (*Phoca vitulina*)—28, 625 over the five-year period, with no more than 5,725 in any year; and

(ii) Steller sea lion (*Eumetopias jubatus*)—20.

§ 217.133 Prohibitions.

Notwithstanding takings contemplated in § 217.130 and authorized by a LOA issued under § 216.106 of this chapter and § 217.136, no person in connection with the activities described in § 217.130 may:

(a) Take any marine mammal not specified in § 217.132(b);

(b) Take any marine mammal specified in § 217.132(b) other than by incidental Level B harassment;

(c) Take any marine mammal in excedance of the numbers specified in 217.132(b)(1);

(d) Take a marine mammal specified in § 217.132(b) if the National Marine Fisheries Service (NMFS) determines such taking is resulting or will result in more than a negligible impact on the species or stocks of such marine mammal;

(e) Take a marine mammal specified in § 217.132(b) if NMFS determines such taking is resulting in or will result in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses; or

(f) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under § 216.106 and § 217.136 of this chapter.

§ 217.134 Mitigation requirements.

When conducting the activities identified in § 217.130(a), the mitigation measures contained in any LOA issued under § 216.106 and § 217.136 of this chapter must be implemented. These mitigation measures include but are not limited to:

(a) General conditions:

(1) If any marine mammal species not listed in § 217.132(b) are observed during conduct of the activities identified in § 217.130(a) and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms), Apache must avoid such exposure (*e.g.*, by altering speed or course or by power down or shutdown of the sound source).

(2) If the allowable number of takes on an annual basis listed for any marine mammal species in § 217.132(b) is exceeded, or if any marine mammal species not listed in § 217.132(b) is exposed to SPLs greater than or equal to 160 dB re 1 μPa (rms), Apache shall immediately cease survey operations involving the use of active sound sources (*e.g.*, airguns and pingers), record the observation, and notify NMFS Office of Protected Resources.

(3) Apache must notify the Office of Protected Resources, NMFS, at least 48 hours prior to the start of seismic survey activities each year.

(4) Apache shall conduct briefings as necessary between vessel crews, marine mammal monitoring team, and other relevant personnel prior to the start of all survey activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, operational procedures, and reporting requirements.

(b) *Visual monitoring.* (1) Apache shall establish zones corresponding to the area around the source within which SPLs are expected to equal or exceed relevant acoustic criteria for Level A and Level B harassment. These zones shall be established as exclusion zones (shutdown zones, described in in § 217.134 (c)(2)) to avoid Level A harassment of any marine mammal, Level B harassment of beluga whales, or Level B harassment of aggregations of five or more killer whales or harbor porpoises. For all marine mammals other than beluga whales or aggregations of five or more harbor porpoises or killer whales, the Level B harassment zone shall be established as a disturbance zone and monitored as described in § 217.135(a)(1). These zones shall be defined in each annual LOA to allow for incorporation of new field measurements.

(2) Vessel-based monitoring for marine mammals must be conducted before, during, and after all activity identified in § 217.130(a) that is conducted during daylight hours (defined as nautical twilight-dawn to

nautical twilight-dusk), and shall begin at least thirty minutes prior to the beginning of survey activity, continue throughout all survey activity that occurs during daylight hours, and conclude no less than thirty minutes following the cessation of survey activity. Apache shall use a sufficient number of qualified protected species observers (PSO), at least two PSOs per vessel, to ensure continuous visual observation coverage during all periods of daylight survey operations with maximum limits of four consecutive hours on watch and twelve hours of watch time per day per PSO. One PSO must be a supervisory field crew leader. A minimum of two qualified PSOs shall be on watch at all times during daylight hours on each source and support vessel (except during brief meal and restroom breaks, when at least one PSO shall be on watch).

(i) A qualified PSO is a third-party trained biologist, with prior experience as a PSO during seismic surveys and the following minimum qualifications:

(A) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(B) Advanced education in biological science or related field (undergraduate degree or higher required);

(C) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

(D) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(E) Sufficient training, orientation, or experience with the survey operation to provide for personal safety during observations;

(F) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when survey activities were conducted; dates and times when survey activities were suspended to avoid exposure of marine mammals to sound within defined exclusion zones; and marine mammal behavior; and

(G) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(ii) PSOs must have access to binoculars (7 x 50 with reticle rangefinder; Fujinon or equivalent quality), and optical rangefinders, and shall scan the surrounding waters from the best available suitable vantage point with the naked eye and binoculars. At least one PSO shall scan the surrounding waters during all daylight hours using bigeye binoculars.

(iii) PSOs shall also conduct visual monitoring:

(A) While the airgun array and nodes are being deployed or recovered from the water; and

(B) During periods of good visibility when the sound sources are not operating for comparison of animal abundance and behavior.

(iv) PSOs shall be on watch at all times during daylight hours when survey operations are being conducted, unless conditions (*e.g.*, fog, rain, darkness) make observations impossible. The lead PSO on duty shall make this determination. If conditions deteriorate during daylight hours such that the sea surface observations are halted, visual observations must resume as soon as conditions permit.

(3) Survey activity must begin during periods of good visibility, which is defined as daylight hours when weather (*e.g.*, fog, rain) does not obscure the relevant exclusion zones within maximum line-of-sight. In order to begin survey activity, the relevant taxa-specific exclusion zones must be clear of marine mammals for not less than thirty minutes. If marine mammals are present within or are observed approaching the relevant exclusion zone during this thirty-minute pre-clearance period, the start of survey activity shall be delayed until the animals are observed leaving the zone of their own volition and/or outside the zone or until fifteen minutes (for pinnipeds and harbor porpoises) or thirty minutes (for beluga whales, killer whales, and gray whales) have elapsed without observing the animal. While activities will be permitted to continue during low-visibility conditions, they must have been initiated following proper clearance of the exclusion zone under acceptable observation conditions and must be restarted, if shut down for greater than ten minutes for any reason, using the appropriate exclusion zone clearance procedures.

(c) *Ramp-up and shutdown.* (1) Survey activity involving the full-power airgun array or shallow-water source must be initiated, following appropriate clearance of the exclusion zone, using accepted ramp-up procedures. Ramp-up is required at the start of survey activity and at any time following a shutdown of ten minutes or greater. Ramp-up shall be implemented by starting the smallest single gun available and increasing the operational array volume in a defined sequence such that the source level of the array shall increase in steps not exceeding approximately 6 dB per five-minute period. PSOs shall continue monitoring the relevant exclusion zones throughout the ramp-up process and, if marine mammals are observed within or approaching the zones, a power down or shutdown shall be implemented and ramp-up restarted following appropriate exclusion zone clearance procedures as described in paragraph (b)(3) of this section.

(2) Apache must shut down or power down the source, as appropriate, immediately upon detection of any marine mammal approaching or within the relevant Level A exclusion zone or upon detection of any beluga whale or aggregation of five or more harbor porpoises or killer whales approaching or within the relevant Level B exclusion zone. Power down is defined as reduction of total airgun array volume from either the full-power airgun array (2,400 in^3) or the shallow-water source (440 in^3) to a single mitigation gun (maximum 10 in^3). Power down must be followed by shutdown in the event that the animal(s) approach the exclusion zones defined for the mitigation gun. Detection of any marine mammal within an exclusion zone shall be recorded and reported weekly, as described in § 217.135(c)(2), to NMFS Office of Protected Resources.

(i) When a requirement for power down or shutdown is triggered, the call for implementation shall be made by the lead PSO on duty and Apache shall comply. Any disagreement with a determination made by the lead PSO on duty shall be discussed after implementation of power down or shutdown, as appropriate.

(ii) Following a power down or shutdown not exceeding ten minutes, Apache shall follow the ramp-up procedure described in paragraph (c)(1) of this section to return to full-power operation.

(iii) Following a shutdown exceeding ten minutes, Apache shall follow the exclusion zone clearance, described in paragraph (b)(3) of this section, and ramp-up procedures, described in paragraph (c)(1) of this section, before returning to full-power operation.

(3) Survey operations may be conducted during low-visibility conditions (*e.g.*, darkness, fog, rain) only when such activity was initiated following proper clearance of the exclusion zone under acceptable observation conditions, as described in paragraph (b)(3) of this section, and there has not been a shutdown exceeding ten minutes. Passive acoustic monitoring is required during all non-daylight hours. Following a shutdown

exceeding ten minutes during low-visibility conditions, survey operations must be suspended until the return of good visibility or the use of passive acoustic monitoring must be implemented. Use of a NMFS-approved passive acoustic monitoring scheme, which will be detailed in each LOA, monitored by a trained PSO, will be used to listen for marine mammal vocalizations. If no vocalizations are observed for 30 minutes, Apache may consider the zone clear and commence ramp-up of airguns. During low-visibility conditions, vessel bridge crew must implement shutdown procedures if marine mammals are observed.

(d) *Additional mitigation.* (1) The mitigation airgun must be operated at no more than approximately one shot per minute, and use of the gun may not exceed three consecutive hours. Ramp-up may not be used to circumvent the three-hour limitation on mitigation gun usage by returning guns to higher power momentarily and then returning to mitigation airgun.

(2) Apache shall alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant exclusion zone and such alteration may result in the animal not entering the zone. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the zone, power down or shutdown must be implemented.

(3) Apache shall not operate airguns within 16 km of the Mean Lower low water (MLLW) line of the Susitna Delta (Beluga River to the Little Susitna River) between April 15 and October 15.

(4) Apache must suspend survey operations if a live marine mammal stranding is reported within a distance of two times the 160dB isopleth of the seismic source vessel coincident to or within 72 hours of survey activities involving the use of airguns, regardless of any suspected cause of the stranding. A live stranding event is defined as a marine mammal found on a beach or shore and unable to return to the water; on a beach or shore and able to return to the water but in apparent need of medical attention; or in the water but unable to return to its natural habitat under its own power or without assistance.

(i) Apache must immediately implement a shutdown of the airgun array upon becoming aware of the live stranding event within 19 km of the seismic array.

(ii) Shutdown procedures shall remain in effect until NMFS determines that all live animals involved in the stranding have left the area (either of their own volition or following responder assistance).

(iii) Within 48 hours of the notification of the live stranding event, Apache must inform NMFS where and when they were operating airguns, beginning 72 hours before the stranding was first observed, and at what discharge volumes.

(iv) Apache must appoint a contact who can be reached at any time for notification of live stranding events. Immediately upon notification of the live stranding event, this person must order the immediate shutdown of the survey operations.

§ 217.135 Requirements for monitoring and reporting.

(a) *Visual monitoring program.* (1) Disturbance zones shall be established as described in § 217.134(b)(1), and shall encompass the Level B harassment zones not defined as exclusion zones in § 217.134(b)(1). These zones shall be monitored to maximum line-of-sight distance from established vessel- and shore-based monitoring locations. If belugas or groups of five or more killer whales or harbor porpoises are observed approaching the 180 dB exclusion zone, operations will power down or shut down. If marine mammals other than beluga whales or aggregations of five or greater harbor porpoises or killer whales are observed within the 160 dB disturbance zone, the observation shall be recorded and communicated as necessary to other PSOs responsible for implementing shutdown/power down requirements and any behaviors documented.

(2) Apache shall utilize a shore-based station to visually monitor for marine mammals. The shore-based station must be staffed by PSOs under the same minimum requirements described in § 217.134(b)(2), must be located at an appropriate height to monitor the area ensonified by that day's survey operations, must be of sufficient height to observe marine mammals within the ensonified area; and must be equipped with pedestal-mounted bigeye (25 x 150) binoculars. The shore-based PSOs shall scan the defined exclusion and disturbance zones prior to, during, and after survey operations, and shall be in contact with vessel-based PSOs via radio to communicate sightings of marine mammals approaching or within the defined zones.

(3) When weather conditions allow for safety, Apache shall utilize helicopter or fixed-wing aircraft to conduct daily aerial surveys of the area that they expect to survey prior to the commencement of operations in order to identify locations of beluga whale aggregations (five or more whales) or cow-calf pairs. Daily surveys that cover all the area potentially surveyed by vessel in that particular day shall be scheduled to occur at least thirty but no more than 120 minutes prior to any seismic survey-related activities (including but not limited to node laying/retrieval or airgun operations) and surveys of similar size shall also occur on days when there may be no seismic activities. Additionally, weekly comprehensive aerial surveys shall occur along and parallel to the shoreline throughout the project area as well as the eastern and western shores of central and northern Cook Inlet in the vicinity of the survey area.

(i) When weather conditions allow for safety, aerial surveys shall fly at an altitude of 305 m (1,000 ft). In the event of a marine mammal sighting, aircraft shall attempt to maintain a lateral distance of 457 m (1,500 ft) from the animal(s). Aircraft shall avoid approaching marine mammals head-on, flying over or passing the shadow of the aircraft over the animal(s).

(ii) [Reserved]

(4) PSOs must use NMFS-approved data forms and shall record the following information:

(i) Effort information, including vessel name; PSO name; survey type; date; time when survey (observing and activities) began and ended; vessel location (latitude/longitude) when survey (observing and activities) began and ended; vessel heading and speed (knots).

(ii) Environmental conditions while on visual survey, including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, ice cover (percent of surface, ice type, and distance to ice if applicable), cloud cover, sun glare, and overall visibility to the horizon (in distance).

(iii) Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions).

(iv) Activity information, such as the number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*e.g.,* pre-ramp-up survey, ramp-up, power down, shutdown, testing, shooting, ramp-up completion, end of operations, nodes).

(v) When a marine mammal is observed, the following information shall be recorded:

(A) Information related to the PSO including: Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform, aerial, land); PSO who sighted the animal; time of sighting;

(B) Vessel information including: Vessel location at time of sighting; water depth; direction of vessel's travel (compass direction);

(C) Mammal-specific physical observations including: Direction of animal's travel relative to the vessel (drawing is preferred); pace of the animal; estimated distance to the animal and its heading relative to vessel at initial sighting; identification of the animal (genus/species/sub-species, lowest possible taxonomic level, or unidentified; also note the composition of the group if there is a mix of species); estimated number of animals (high/low/best); estimated number of animals by cohort (when possible; adults, yearlings, juveniles, calves, group composition, etc.); description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

(D) Mammal-specific behavioral observations including: Detailed behavioral observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior); animal's closest point of approach and/or closest distance from the center point of the airgun array; platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other).

(vi) Description of any actions implemented in response to the sighting (*e.g.,* delays, power down, shutdown, ramp-up, speed or course alteration); time and location of the action should also be recorded.

(vii) If mitigation action was not implemented when required, description of circumstances.

(viii) Description of all use of mitigation gun including running time, start and stop time, and reason for implementation.

(5) The data listed in § 217.135(a)(4)(i) and (ii) shall also be recorded at the start and end of each watch and during a watch whenever there is a change in one or more of the variables.

(b) *Onshore seismic effort.* (1) When conducting onshore seismic effort, in the event that a shot hole charge depth of 10 m is not consistently attainable due to loose sediments collapsing the bore hole, a sound source verification study must be conducted on the new land-based charge depths.

(2) [Reserved]

(c) *Reporting.* (1) Apache must immediately report to NMFS at such time as 25 total beluga whales (cumulative total during period of validity of annual LOA) have been detected within the 160-dB re 1 μPa (rms) exclusion zone, regardless of shutdown or power down procedures implemented, during seismic survey operations.

(2) Apache must submit a weekly field report to NMFS Office of Protected Resources each Thursday during the weeks when in-water seismic survey activities take place. The weekly field reports shall summarize species detected (number, location, distance from seismic vessel, behavior), in-water activity occurring at the time of the sighting (discharge volume of array at time of sighting, seismic activity at time of sighting, visual plots of sightings, and number of power downs and shutdowns), behavioral reactions to in-water activities, and the number of marine mammals exposed to sound at or exceeding relevant thresholds. Additionally, Apache must include which km^2 grid cells were surveyed during that week and the resulting number of belugas that may have been taken using the Goetz *et al.* (2012) model. Apache must provide the cells, corresponding density, and possible number of beluga exposures using the Goetz model for that week, as well as the total from the preceding weeks.

(3) Apache must submit a monthly report, no later than the fifteenth of each month, to NMFS Office of Protected Resources for all months during which in-water seismic survey activities occur. These reports must summarize the information described in paragraph (a)(4) of this section and shall also include:

(i) An estimate of the number (by species) of:

(A) Pinnipeds that have been exposed to sound (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 190 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited; and

(B) Cetaceans that have been exposed to sound (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited.

(ii) A description of the implementation and effectiveness of the terms and conditions of the Biological Opinion's Incidental Take Statement and mitigation measures of the LOA. For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness in minimizing the adverse effects of the action on Endangered Species Act-listed marine mammals.

(4) Apache shall submit an annual report to NMFS Office of Protected Resources covering a given calendar year by October 31st annually. The annual report shall include summaries of the information described in paragraph (a)(4) of this section and shall also include:

(i) Summaries of monitoring effort (*e.g.,* total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(ii) Analyses of the effects of various factors influencing detectability of marine mammals (*e.g.,* sea state, number of observers, and fog/glare);

(iii) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(iv) Analyses of the effects of survey operations; and

(v) Sighting rates of marine mammals during periods with and without seismic survey activities (and other variables that could affect detectability), such as:

(A) Initial sighting distances versus survey activity state;

(B) Closest point of approach versus survey activity state;

(C) Observed behaviors and types of movements versus survey activity state;

(D) Numbers of sightings/individuals seen versus survey activity state;

(E) Distribution around the source vessels versus survey activity state; and

(F) Numbers of marine mammals (by species) detected in the 160, 180, and 190 dB re 1 μPa (rms) zones.

(5) Apache shall submit a final annual report to the Office of Protected Resources, NMFS, within thirty days after receiving comments from NMFS on the draft report, by November 30th annually.

(d) *Notification of dead or injured marine mammals.* (1) In the event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury, or mortality, Apache shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding

Coordinator, NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(iv) Description of marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source use in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s).

(2) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Apache to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Apache may not resume their activities until notified by NMFS that they may do so.

(3) In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Apache shall immediately report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS. The report must include the same information identified in § 217.135(d)(1). If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in § 217.134(d)(4) must be implemented. NMFS will work with Apache to determine whether additional mitigation measures or modifications to the activities are appropriate.

(4) In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the LOA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Apache shall report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Apache shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. If the observed marine mammal is dead, activities may continue while NMFS reviews the circumstances of the incident. If the observed marine mammal is injured, measures described in § 217.134(d)(4) must be implemented and Apache may not resume activities until notified by NMFS that they may do so.

§ 217.136 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, Apache must apply for and obtain an LOA, as required by § 216.106 of this chapter.

(b) LOAs issued to Apache, unless suspended or revoked, may be effective for a period of time not to exceed one year or the period of validity of this subpart.

(c) An LOA application must be submitted to the Director, Office of Protected Resources, NMFS, by December 31st of the year preceding the desired start date.

(d) An LOA application must include the following information:

(1) The date(s), duration, and the area(s) where the activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each area;

(3) The estimated percentage and numbers of marine mammal species/stocks potentially affected in each area for the period of effectiveness of the Letter of Authorization.

(4) If an application is for an LOA renewal, it must meet the requirements set forth in § 217.137.

(e) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Apache must apply for and obtain a modification of the Letter of Authorization as described in § 217.137.

(f) An LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, their habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(g) Issuance of an LOA (including renewals and modifications) will be based on a determination by NMFS that the level of taking will be consistent with the findings made for the total taking allowable under this subpart.

(h) If NMFS determines that the level of taking is resulting or may result in more than a negligible impact on the species or stocks of such marine mammal, the LOA may be modified or suspended after notice and a public comment period.

(i) Notice of issuance or denial of a LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.137 Renewals and modifications of Letters of Authorization and Adaptive Management.

(a) An LOA issued under § 216.106 of this chapter and § 217.136 for the activity identified in § 217.130(a) may be renewed or modified upon request by the applicant, provided the following are met (in addition to the determination in § 216.136(e)):

(1) Notification to NMFS that the activity described in the application submitted under § 217.130(a) will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming or remaining LOA period;

(2) Timely receipt (by the dates indicated) of monitoring reports, as required under § 217.135(c)(3).

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 217.135(c) and the LOA issued under § 216.106 and § 217.136, were undertaken and are expected to be undertaken during the period of validity of the LOA.

(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request as well as the proposed modification to the LOA. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the original determinations made for the regulations are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in this subpart or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

(d) An LOA issued under § 216.106 of this chapter and § 217.136 for the activity identified in § 217.130 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS, in response to new information and in consultation with Apache, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more

effectively accomplishing the goals of mitigation and monitoring.

(i) Possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures include:

(A) Results from Apache's monitoring from the previous year(s).

(B) Results from marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) NMFS will withdraw or suspend an LOA if, after notice and opportunity for public comment, NMFS determines this subpart is not being substantially complied with or that the taking allowed is or may be having more than a negligible impact on an affected species or stock specified in § 217.132(b) or an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The requirement for notice and comment will not apply if NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals. Notice would be published in the **Federal Register** within 30 days of such action.

[FR Doc. 2016–16695 Filed 7–19–16; 8:45 am]

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1985

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 139 July 20, 2016

Part III

The President

Proclamation 9468—Honoring the Victims of the Attack in Nice, France

Federal Register
Vol. 81, No. 139
Wednesday, July 20, 2016

Presidential Documents

Title 3—

The President

Proclamation 9468 of July 15, 2016

Honoring the Victims of the Attack in Nice, France

By the President of the United States of America

A Proclamation

As a mark of respect for the victims of the attack perpetrated on July 14, 2016, in Nice, France, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, July 19, 2016. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of July, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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H.R. 4372/P.L. 114–192
To designate the facility of the United States Postal Service located at 15 Rochester Street, Bergen, New York, as the Barry G. Miller Post Office. (July 15, 2016; 130 Stat. 672)

H.R. 4960/P.L. 114–193

To designate the facility of the United States Postal Service located at 525 N Broadway in Aurora, Illinois, as the "Kenneth M. Christy Post Office Building". (July 15, 2016; 130 Stat. 673)

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